

Spearman, Gina v. Broker Solutions, Inc. Et Al

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GINA SPEARMAN,

Plaintiff,

vs.

Case No. 1:20-cv-04981-CAP

BROKER SOLUTIONS, INC.,

d/b/a NEW AMERICAN FUNDING,

Defendant.

REMOTE VIDEOCONFERENCE DEPOSITION

of

SCOTT FROMMERT

January 28, 2022

12:00 p.m.

Lucy C. Rateau, RPR, CCR

Page 2

## INDEX OF EXHIBITS

Exhibit

Description

Page

(No exhibits marked)

## INDEX TO EXAMINATIONS

PAGE

By Mr. Hargrove

5

1 APPEARANCES OF COUNSEL (via Zoom videoconference):

2  
3 On behalf of the Plaintiff:

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5 MARYBETH GIBSON, ESQ.

6 The Finley Firm, PC

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12  
13 On behalf of the Defendant:

14 HENRY M. PERLOWSKI, ESQ.

15 T. CHASE OGLETREE, ESQ.

16 Arnall Golden Gregory, LLP

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18 Atlanta, GA 30363

19 404.873.8500

20 henry.perlowski@ogg.com

21 chase.ogletree@ogg.com

22  
23 Also Present Remotely:

24 Andrew Westle, Esq.

25 Gina Spearman

1 (All counsel stipulated to the remote  
2 swearing in of the witness due to the COVID-19  
3 pandemic.)  
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1 SCOTT D. FROMMERT

2 having been first duly sworn, was examined and  
3 testified as follows:

4 EXAMINATION

5 BY MR. HARGROVE:

6 Q. Mr. Frommert, I'm Travis Hargrove. I  
7 represent Gina Spearman in a case that she has filed  
8 against New American Funding. We appreciate you  
9 appearing pursuant to a subpoena via Zoom today for  
10 your deposition.

11 You have the right to read and sign your  
12 deposition or you can waive that right.

13 Before we go much further, are you  
14 represented by counsel in this deposition today?

15 A. I mean Henry and I talked about he would  
16 object on my behalf, because I do have, you know,  
17 some concerns on that; but other than that I guess  
18 that would be representation.

19 Q. So is he your lawyer today?

20 MR. PERLOWSKI: We will be representing  
21 Mr. Frommert for purposes of the deposition  
22 today.

23 BY MR. HARGROVE:

24 Q. So you can get with your lawyer and then  
25 advise the court reporter whether you want to read

1 and sign or waive that right.

2 MR. PERLOWSKI: We'll reserve that  
3 right, Travis.

4 MS. GIBSON: Okay. The usual  
5 stipulations good with everybody?

6 MR. PERLOWSKI: Yes.

7 BY MR. HARGROVE:

8 Q. Mr. Frommert, have you ever had your  
9 deposition taken before?

10 A. Yes, I have.

11 Q. And what kind of a case was that in?

12 A. Probably a couple of very, you know, all  
13 along the lines of my role related to financial  
14 knowledge on either litigation for employment  
15 reasons, non-compete, non-solicitations, things of  
16 this nature.

17 Q. Any of those depositions you gave, were  
18 they in your capacity as an employee of New American  
19 Funding?

20 A. No.

21 Q. And if I call New American Funding NAF, is  
22 that fair, will you know what I'm talking about?

23 A. Yes.

24 Q. Have you ever sued anyone personally or  
25 been sued?

1 A. No.

2 Q. So none of the depositions you gave -- all  
3 the depositions you gave were in your capacity as an  
4 employee for some entity, correct?

5 A. That is correct.

6 Q. Just to go through a couple of background  
7 or ground rules today, everything that anyone says  
8 is going to be taken down by the court reporter, so  
9 it's important that we make sure we give verbal  
10 responses to any questions; that way she can take it  
11 down. If I tell you I need a verbal response  
12 because you said uh-huh or giving a head nod or  
13 something like that, I'm not trying to be rude; I  
14 just want to make sure the answers are clear on the  
15 record. Fair enough?

16 A. Understood.

17 Q. If you need a break today -- I don't think  
18 we're going to be here too terribly long, but if you  
19 need a break today at anytime for any reason, no  
20 problem with that. Just let me know. I would  
21 appreciate though if you would go ahead and answer  
22 whatever question is on the table before we take a  
23 break. Fair enough?

24 A. Understood.

25 Q. The questions I ask you today, I'm not

1       trying to ask you trick questions. I'm not trying  
2       to trip you up or anything like that. I'm trying to  
3       ask clear questions so that I can find out what you  
4       may know or what you may not know about this case  
5       that we're here taking your deposition in. So if I  
6       ask a question that you do not understand, please  
7       let me know that and I'll ask it until I ask it in a  
8       way that you do understand it. Fair enough?

9           A. Understood.

10       Q. All right. And to the extent you don't  
11       understand a question but answer anyway, your lack  
12       of understanding is not going to be reflected on the  
13       record. Fair enough?

14       A. Understood.

15       Q. Do you understand all those ground rules I  
16       went over?

17       A. Yes. I'm very comfortable.

18       Q. And you're fine abiding by it?

19       A. I'm fine what?

20       Q. You're fine abiding by those ground rules  
21       today?

22       A. Yes, sir.

23       Q. Are you under the influence of any  
24       medication or anything else, legal or illegal, that  
25       would affect your ability to fully and truthfully



1       testify today?

2             A.   No, sir.

3             Q.   Have you ever been diagnosed with any sort  
4       of a memory issue?

5             A.   No, sir.

6             Q.   I should have done this at the beginning,  
7       but could you state your full name for the record?

8             A.   Scott David Frommert.

9             Q.   And, Mr. Frommert, where do you currently  
10      live?

11            A.   Laguna Beach, Laguna Niguel, California.

12            Q.   Have you ever lived in Georgia?

13            A.   No, sir.

14            Q.   Do you have any family members who reside  
15      in Georgia?

16            A.   No, sir.

17            Q.   Have you ever been in Georgia?

18            A.   Several times.

19            Q.   Was that in your capacity for NAF?

20            A.   Yes, that was one of the times, correct.

21            Q.   On that time you came to Georgia for NAF,  
22      what was the purpose for that visit?

23            A.   Rolling out compensation plans and  
24      discussing compensation plan changes.

25            Q.   And whose compensation plans did those

1 meetings address or did that meeting address?

2 A. That specific meeting addressed Gina and  
3 Kelly -- Gina Spearman and Kelly Allison, the  
4 regional managers for the Georgia area for New  
5 American Funding, to discuss and review compensation  
6 that would align to the P and Ls, branch regional  
7 P and Ls that were created.

8 Q. And we'll come back to that meeting. The  
9 other times that you've been to Georgia, were those  
10 all work related as well?

11 A. Prior employers, but yes.

12 Q. Prior employers. Can you walk me briefly  
13 through your employment history?

14 A. I don't know how far back you want me to go  
15 but I can go super fast.

16 Q. Start with college. I don't care about  
17 cutting the grass when you were in high school or  
18 anything like that, but in your professional career.

19 A. Immediately out of school I worked at  
20 Vanguard Brokerage Investment Company for a brief  
21 period of time, call it one year; left, went to a  
22 small regional mortgage lender that did wholesale  
23 retail out of North Scottsdale, two-ish years. They  
24 did a lot of subprime. They went out of business.  
25 I left, I went to CVS Caremark, which is a benefits

1 provider nationally, for four-ish years. At the  
2 time, after getting a master's I transferred over  
3 and spent four and a half, five years at Chase  
4 running retail mortgage there, retail mortgage, home  
5 equity lines of credit, at which time I left. I  
6 spent, give or take, four years, five years at ONCU  
7 Financial as CFO. From there I went to New American  
8 Funding as CFO.

9 Q. Are you presently at New American Funding?

10 A. I am not.

11 Q. Are you employed presently?

12 A. I am.

13 Q. And where are you employed now?

14 A. Sun West Mortgage, a national mortgage  
15 lender.

16 Q. And is that the only job you've held since  
17 now?

18 A. That is correct.

19 Q. And what's your position, your current  
20 role?

21 A. Chief Financial Officer.

22 Q. Could you walk me briefly through your  
23 educational background?

24 A. Undergraduate, I have a business degree  
25 with an emphasis in finance from Arizona State

1 University Barrett Honors College as well as going  
2 to -- I guess between there I did several Series  
3 licenses for investment, Series 6, 66, things of  
4 this nature. Back to getting a master's in  
5 financial engineering from Arizona State W.P. Carey  
6 School of Business.

7 Q. What year did you get that master's in  
8 financial engineering?

9 A. I would have to look. 2009, '8, '9.

10 Q. What year did you originally graduate from  
11 college?

12 A. 2003.

13 Q. And for a layperson can you describe what a  
14 masters in financial engineering, what that sort of  
15 entails?

16 A. Exclusively finance classes. There are no  
17 classes but financial and advanced mathematics  
18 classes. So you learn how to price bonds, build  
19 bonds. You learn how to structure financial  
20 agreements through -- there's a class in law,  
21 there's a class in Excel modeling, there's a class  
22 in DBA and SQL coding, along with multiple advanced  
23 mathematics classes, database classes, things of  
24 this nature. And effectively it's all engineering,  
25 so no linear differential equations, just building

1 nerdy stuff that probably nobody cares about.

2 Q. I may have to link you up with my daughter  
3 who's 12 and says she wants to be an engineer.  
4 Sounds like it would do better for her to ask you  
5 for help with her homework than me. Good deal.

6 As far as the companies that you've worked  
7 for in the past, any of them have a presence in the  
8 Atlanta area?

9 A. ONCU Financial had a fairly large presence  
10 in the Atlanta, Savannah type areas, correct.

11 Q. And is that the one that was into the  
12 subprime and they're no more?

13 A. No, it was afterwards. That was probably  
14 2005, '6; so ONCU was 2010 through '14, give or  
15 take.

16 Q. And ONCU, you said they had; do you know if  
17 they still have much of a presence?

18 A. They do not any longer have a very large  
19 presence. They may have a couple of originators.

20 Q. Are you a member of any civic  
21 organizations, anything like that?

22 A. No organizational --

23 Q. Are you a member of any professional  
24 organizations?

25 A. I'm not.

1 Q. Have you ever served in the military?

2 A. No, sir.

3 Q. Have you ever filed for bankruptcy?

4 A. No.

5 Q. What did you do to prepare for this  
6 deposition?

7 A. Really nothing. Got a cup of coffee. That  
8 was about it.

9 Q. All right. Didn't look at any documents?

10 A. I don't have any documents. I didn't  
11 retain any documents after my employment.

12 Q. Your meeting -- your phone call with Mr.  
13 Perlowski, how long of a phone call was that?

14 A. Five minutes. I don't know. Pretty brief.

15 Q. Prior to you speaking with Mr. Perlowski  
16 for five minutes the other day, since you departed  
17 from NAF have you had any conversations in person or  
18 by phone with anyone from NAF?

19 A. Just one ex-employee that I'm friends with,  
20 on a friendship basis, but nobody involved with this  
21 case.

22 Q. Okay. Who is that employee, just so I make  
23 sure it's not someone involved in this case?

24 A. Jim Muth.

25 Q. And did your discussions with Jim Muth have

1 anything at all to do with Ms. Spearman?

2 A. Nothing. Just friendship, dogs, family,  
3 wives.

4 Q. Any discussions with anyone other than Mr.  
5 Muth from NAF from the time of your departure up  
6 until the present?

7 A. Yeah. I guess -- Jon Reed and I are  
8 friends to some degree. But we've talked three  
9 times maybe; how are you, where are you going. When  
10 I first left I called him because he left around the  
11 same time. What's your plans, where are you going,  
12 that type of stuff, personal.

13 Q. None of the discussions with Jon Reed  
14 pertained in any way to Ms. Spearman?

15 A. No. More curiosity, where he was going to  
16 plant his flag.

17 Q. Have you ever read any of the pleadings in  
18 this case that Ms. Spearman has filed?

19 A. No, sir.

20 Q. Have you done any independent internet  
21 research as to what the case may be about?

22 A. No, none.

23 Q. And you've said upon your departure from  
24 NAF you took no documents with you, correct?

25 A. Correct.

1 Q. Did you have, at the time you departed --  
2 and I'm getting a little out of kilter because we'll  
3 walk through that later when we go over some  
4 documents. Did you have a computer that NAF issued  
5 you?

6 A. Yes. I returned it the day of my final day  
7 of employment.

8 Q. And on that computer were any documents  
9 that you had saved on that computer and left on that  
10 computer with NAF upon your departure?

11 A. No. I think I would regularly use the most  
12 -- certain things would be saved onto my hard drive  
13 versus the share drives.

14 Q. So there was a share drive at NAF and your  
15 hard drive, and you would have saved documents in  
16 one of those two places?

17 A. Correct.

18 Q. When you had the computer at NAF, when you  
19 turned it in did you remove anything from that  
20 computer before you turned it in?

21 A. No.

22 Q. If you could walk me through -- and you've  
23 given me your history, but how did you come to be  
24 employed by NAF? And I want you to kind of start  
25 with how you were recruited or learned about the job



1 and walk me up to your hire.

2 A. A really rapid process. They actually  
3 posted a confidential posting in a blog that's a  
4 pretty well-known mortgage blog called the Chrisman  
5 Blog to which I replied, you know, just hi, I have  
6 an interest, let's talk. I think within a day I got  
7 a phone call from Christy Bunce or Jason O'Bradovich  
8 -- I don't recall because it was a long time ago --  
9 a brief phone call, two or three minutes, what is  
10 your background, what is your interest, do you want  
11 to get on a more formal call. I think that call  
12 happened like the next day. So it was really,  
13 really rapid. That was more like an hour with  
14 four-ish people, what is your background, what is  
15 your skill set, to which they booked a flight and  
16 flew me out I think within three days. So I got on  
17 a plane, went out there, spent a half a day with  
18 Rick, Patty, Christy, the whole group, probably just  
19 walking through what I had built, what my background  
20 was and kind of walking through what their goals  
21 were for this role and just figuring out if that  
22 made a fit. Like most roles, you leave and -- it  
23 felt good, but I didn't know if it was going to be a  
24 fit, so you get a call a couple of days later with  
25 an offer. I think two weeks later I sold my house

1 and moved out there. It was really, really rapid.

2 Q. I'm going to kind of break it down a little  
3 bit. You said that first call was with Christy  
4 Bunce and perhaps Mr. O'Bradovich?

5 A. Yeah. I don't recall exactly, but I  
6 believe -- I'm pretty confident it was with Christy.  
7 I'm not sure if Jason was on the line or not.

8 Q. You were responding to a posting on a  
9 mortgage industry blog, correct?

10 A. Correct.

11 Q. Do you remember what the contents of that  
12 posting were?

13 A. No. I wish I did. I don't have that good  
14 of a memory. Something like looking for a strategic  
15 CFO to join large national mortgage lender. It was  
16 pretty brief.

17 Q. Had you --

18 A. The blog limits you to 50 characters or  
19 something. A pretty brief blog.

20 Q. Got you. You had been a CFO with prior  
21 employers, correct?

22 A. Correct.

23 Q. How long had you been a CFO before you  
24 became a CFO with them?

25 A. Approximately five years at ONCU Financial.

1 Q. And that first initial call with Ms. Bunce  
2 and perhaps Mr. O'Bradovich, you said that was about  
3 a two to three-minute call, just --

4 A. Yeah, just -- not to get into the process  
5 too much, but when you respond to the blog it's hi,  
6 I'm Scott, I'm interested, but I have a job, I don't  
7 want to put my name out there and get slaughtered by  
8 my current employer.

9 Q. Right.

10 A. So here's my name, can this be  
11 confidential. I got a call and said, you know, we  
12 don't know much about you. Can you just give us the  
13 basics. Because I didn't want to send my resumé to  
14 a complete stranger.

15 Q. Sure.

16 A. So it was just like here it is and, okay,  
17 can you send over your official resumé. Here's our  
18 email address. And sent it over and then -- I can't  
19 remember, some admin basically scheduled a more  
20 official one-hour type call.

21 Q. So the posting is kind of a blind posting,  
22 and you wanted to make sure you don't send your  
23 resumé to your own employer who didn't know you were  
24 looking, correct?

25 A. There you go.

1 Q. So after that initial call, this hour-long  
2 approximately call, you said there were multiple  
3 people on that call. Can you tell me who you recall  
4 being on that call?

5 A. To the best of my recollection both of the  
6 Arvielos, Rick and Patty, Christy Bunce and Jason  
7 O'Bradovich.

8 Q. And on that hour-long call approximately  
9 were you told what NAF was looking for?

10 A. I mean the vast majority started with what  
11 I did and what my skill set was, what my strengths  
12 and weaknesses were. I think there was -- I would  
13 ask the normal things. I'm not an accountant, and I  
14 make that very clear with everybody I talk to. I  
15 don't do accounting. I can't close the books. So  
16 my focus is building math models and value models,  
17 which peaked their interest, and how do you do that  
18 and how is that done and what would that look like.  
19 So a lot of the call went that direction. And there  
20 was certainly more interest on that topic. And they  
21 said that would add a lot of value to the company.  
22 So I don't think it was specifically stated, but  
23 that was a focal point.

24 Q. Was it described what the math or value  
25 models, why those might be useful to NAF?

1           A. No. It was just a very brief call, that  
2       initial call.

3           Q. So you were giving information to them.  
4       Did they give much information to you about why they  
5       were looking for a CFO?

6           A. Not on that hour-long call, no.

7           Q. How about what the duties of the position  
8       would be, did they give you any information on that  
9       hour-long call?

10          A. They had sent like a job description with  
11       some duties and bullets. At some point I had sent  
12       the resumé over and they sent back a scheduled  
13       interview with that official posting, if you will,  
14       and the job responsibilities.

15          Q. Do you recall what those job  
16       responsibilities were listed as?

17          A. No.

18          Q. You don't?

19          A. No. That was probably three years ago.

20       I'm sorry --

21          Q. That's fine --

22          A. -- four years ago.

23          Q. If you don't know, you don't know.

24          A. I don't recall.

25                   MR. PERLOWSKI: Travis, you guys are

1 starting to talk over each other. Could you  
2 please let him finish his answer?

3 MR. HARGROVE: Sure. No problem.

4 BY MR. HARGROVE:

5 Q. So after you had this hour-long call you  
6 said within about three days you were flown out to  
7 NAF's offices to interview in person?

8 A. That is correct.

9 Q. And where -- were you flown to Tustin, to  
10 that office?

11 A. Yeah. I lived in Phoenix, Arizona, so I  
12 flew out to John Wayne Airport, which is in Orange  
13 County. I stayed in that general vicinity, and had  
14 scheduled, to the best of my recollection, like an  
15 early morning, like 9 a.m. meeting. So I flew out  
16 the night before, stayed the night, got up and did  
17 -- call it a two or three-hour meeting. It was on a  
18 Friday I specifically remember because I stayed the  
19 weekend to get familiar with the town and the area.  
20 Should it work out I wanted to know where I might be  
21 moving.

22 Q. And in that two to three-hour meeting can  
23 you tell me who was present for that?

24 A. I can tell you who I know was there. There  
25 might have been more people, but I don't recall.

1 There was a meeting in Rick Arvielo's office with  
2 Rick, Patty and Christy. And there was an  
3 additional break-away meeting with just me and Jason  
4 O'Bradovich. I don't recall if he was in the room  
5 or not, but I know I did a separate break-away with  
6 him also.

7 Q. What was discussed in that first meeting at  
8 Rick's office with Patty, Christy and possibly  
9 others?

10 A. It was a very standard interview. So there  
11 were cookie cutter interview questions, what would  
12 you do in this situation, that situation, can you  
13 tell me about your background. There was -- you  
14 know, if you took an interview -- I don't remember  
15 the exact time, two and a half hours, 80 percent is  
16 them asking that. At the end when you've satisfied  
17 their interest, they say this sounds good, and you  
18 start to ask them questions, what do you have for  
19 us, what does the job look like, I don't do this  
20 accounting. And they basically said the modeling we  
21 do, the things you build are exactly what we don't  
22 feel some of these things we have. Those could be  
23 staff rank reporting, leakage reporting, different  
24 types of metrics that I have skill sets building  
25 that they didn't necessarily have in place, special

1 techniques for saving money, restructuring warehouse  
2 agreements and things of this nature. So I  
3 basically talked about how I would want to do it and  
4 if that worked for them or not. Because that's  
5 effectively how I do things. Does this work for  
6 you, does this not work for you. And it started,  
7 yes, that's exactly what we need.

8 So that evolved into call it multiple silos  
9 of conversations, one of which would be reporting,  
10 one of which would be warehouse banks, one of which  
11 would be expense reduction. So we went through all  
12 of those buckets.

13 Q. As far as reporting, was that like  
14 reporting of financial performance?

15 A. Broken into call it three buckets. There  
16 would be one for cash management reporting and how  
17 you use and leverage that to create wealth, number  
18 one. Number two would be performance reporting,  
19 which would be broken into regional branch  
20 profitability modeling as well as individual staff  
21 rank reporting. And then the third bucket would be  
22 product level profitability.

23 Q. Was there any discussion about whether you  
24 would be involved in the financial statements of  
25 NAF?



1 MR. PERLOWSKI: Object to the form. You  
2 can answer.

3 A. What I would say is I was very clear I do  
4 not close the books. I do not make journal entries.  
5 And they have a chief accounting officer, Jim Cross,  
6 that worked for the organization. And if Jim were  
7 to not be there, I could not close the books. But I  
8 would review the month close financials. I would  
9 sign off on them. They had a roughly 30-day close  
10 process, and I committed to them to get to an  
11 eight-day close process through process automation.  
12 So it was more process -- project management  
13 oriented versus functional daily accounting.

14 Q. Anything else that was discussed in that  
15 meeting in Mr. Arvielo's office?

16 A. Compensation, timelines, the fact I owned a  
17 home and had to sell it, things -- just structural  
18 deals.

19 Q. The second meeting you had with Mr.  
20 O'Bradovich, can you tell me about what was  
21 discussed in that meeting?

22 A. An interesting meeting. It was just really  
23 him saying the culture here is really this, do you  
24 think you can fit, meaning you're going to be on an  
25 island, that they go off and do their own thing and

1 kind of like -- I don't know how to put it other  
2 than, hey, I'm your buddy, how this is going to  
3 work. I don't really know a better way to describe  
4 that.

5 Q. So no real information about the job, just  
6 information about the culture of the company?

7 A. Correct.

8 Q. Any discussion with Mr. O'Bradovich about  
9 NAF's financial statements or the way those were  
10 done?

11 A. None at all.

12 Q. In the first meeting was there any  
13 discussion about NAF's financial statements and the  
14 way they were done, the earlier meeting in Mr.  
15 Arvielo's office?

16 MR. PERLOWSKI: Object to the form. You  
17 can answer.

18 A. I guess I want to go on record and say when  
19 I'm answering these it's to the best of my  
20 recollection. I can't remember everything from four  
21 years ago. I don't recall exactly, but I don't  
22 believe so.

23 Q. Fair enough.

24 So after this meeting in Tustin you spent  
25 the weekend, checked the place out, and then was

1 your next conversation with anyone at NAF where you  
2 were made an offer for the job?

3 A. It was into the next week that I was made  
4 an offer. I think I got a call from Christy Bunce,  
5 and she said I'm excited to get you onto the team  
6 and let's talk timelines and structure.

7 Q. And at that point did you accept the job  
8 with NAF?

9 A. Accepted the job, yes.

10 Q. And how long after you accepted the job did  
11 you move from Phoenix to Tustin and start the job?

12 A. Two to three weeks.

13 Q. Wow. Must have been during a hot market to  
14 sell a house.

15 A. I sold the house like three months later.  
16 But sometimes you've just got to do what you've got  
17 to do.

18 Q. I'm with you.

19 Once you became employed by NAF did you  
20 have any sort of employment contract?

21 A. I don't know if you would define it as a  
22 contract. It's a standard employment agreement that  
23 all employees sign that has terms and conditions,  
24 you know, smoke policy, break policy, all those  
25 things that are included. It's, give or take, 10,

1 15 pages, plus a compensation section and -- you  
2 know, I don't think anything unique, no.

3 Q. During the time that you were employed --  
4 let me just make sure -- step back a little bit. Do  
5 you remember when your first day at NAF was?

6 A. I do not remember my -- what my first day  
7 was, no.

8 Q. Do you remember the month?

9 A. I would say, if I'm going off of my best  
10 memory, middle of April, late April, give or take.  
11 I would have to go back and look.

12 Q. Would that be 2019?

13 A. Yes. I mean I literally would just have to  
14 go back to my LinkedIn to look, which is probably  
15 the best way, which is the only way to track it.  
16 That's probably the most accurate.

17 Q. Are you pulling up the LinkedIn right now?

18 A. Yes. My LinkedIn is more accurate than my  
19 brain, because I mark it as I go.

20 It was April '19 through May of 2020. I do  
21 know it has the last day of May. I believe it was  
22 the middle of April.

23 Q. And when you signed off on the documents  
24 that you referred to earlier, you said that set  
25 forth the terms of your employment in the pages of

1 those documents?

2 A. Yes.

3 Q. At any point between April of '19 and May  
4 of '20 did the terms of your employment change?

5 A. Yeah. At some point I think that there was  
6 a compensation increase.

7 Q. All right. Do you remember approximately  
8 when that compensation increase took place?

9 A. Four or five months into it.

10 Q. And when that compensation increase  
11 happened, how were you notified of the increase?

12 A. Rick called me into his office and  
13 discussed it with me.

14 Q. Were there any documents related to the  
15 compensation increase?

16 MR. PERLOWSKI: Object to the form. You  
17 can answer.

18 A. I do not recall. I'm assuming I had to  
19 sign just something to acknowledge it went from X  
20 to Y.

21 BY MR. HARGROVE:

22 Q. But you don't specifically recall whether  
23 you signed a document or not?

24 A. I do not. Actually, I don't think I did.  
25 I think I might have gotten an email from HR.

1 Q. And that would have been sent to your NAF  
2 email account, correct?

3 A. Correct.

4 Q. Did you ever do any work -- did you ever  
5 have any work-related emails sent to or received --  
6 let me go back and ask a better question.

7 Did you ever send any work-related emails  
8 while you were at NAF from any account other than  
9 your NAF email account?

10 A. Not to my knowledge. Sometimes on your  
11 iPhone when you start one it might go into the wrong  
12 account. But that's one in a thousand, on accident.

13 Q. How about as far as receiving emails, did  
14 you ever receive any emails that were NAF work  
15 related to any account other than your NAF email  
16 account?

17 A. No.

18 Q. When you first went to NAF in April of  
19 2019, what were you told to start doing on day one  
20 when you got there?

21 A. I guess I would say I don't know that they  
22 ever had -- they did not have a CFO prior to me. I  
23 don't know that they knew what a CFO did. I think I  
24 paved the path more on my own than them telling me  
25 what to do. So I self directed. I think a good

1 majority of my time, if I broke it into a pie chart,  
2 30 percent spent with the accounting team going  
3 through their process, making sure I had clear  
4 expectations on automation and improvement.  
5 Probably 40 percent of my time was spent auditing  
6 and extracting data so that I could assure the  
7 confidence of the data that I was going to be using  
8 to build these reports. And the remaining  
9 percentage, 30-ish percent of my time was spent  
10 reducing costs, calling vendors and warehouse banks.

11 Q. Did you have any discussions with anyone at  
12 NAF about why, when they had not had a CFO in the  
13 past, they hired you to be CFO?

14 A. Yeah. I think probably one of my first  
15 questions before I joined was why have you not had  
16 one, and I think they basically said we had a chief  
17 accounting officer, Jim, that always closed the  
18 books; and we had clean audited financials, and so  
19 we felt confident with those. So the external  
20 audited financials had consistently done well and  
21 they didn't feel they needed one. I think they  
22 wanted to focus more of the energy on these internal  
23 reports and efficiency modeling, if you will. When  
24 you make the distinction between finance and  
25 accounting, I think they had very, very strong

1 accounting and they might not have had as strong of  
2 analytics, so that's where the gap was that I was  
3 focusing on.

4 Q. Were there any problems with the internal  
5 reports that you were told about?

6 MR. PERLOWSKI: Object to the form.

7 A. I think that there was -- the way I would  
8 characterize it is there was five different people  
9 doing reports, different types of reports. I don't  
10 know if you want to be specific on a report. But  
11 all of those I think had opportunity for  
12 improvement.

13 There had been, within the Call Center  
14 there was conversion metrics reporting that had been  
15 inaccurate that needed remodeling. The mathematics  
16 was improper. The automation of the SQL coding for  
17 the extraction of the data was coming from a CSB  
18 file versus a refreshed SQL file. These things were  
19 causing delays, lags and improper results. So I  
20 think that had been -- call it five different  
21 meetings on the five different reports on what they  
22 saw and what I felt could be done to improve that.  
23 Does that answer the question?

24 Q. Yes, it does. A lot of technical terms in  
25 there; but, yes.



1           A. I'm trying not to do that. I will do  
2 better.

3           Q. No worries there.

4                 So the time you spent meeting with the  
5 accounting team, the 30 percent of the time  
6 approximately that you spent looking at processes,  
7 what processes were you analyzing?

8           A. You have a bunch of clerks making data  
9 entry on payables and loans, right, and they're  
10 physically keying them in, when you can get files  
11 that automatically batch and upload, and that saves  
12 time, versus a stack of papers. You can  
13 automatically do it through computer coding, and you  
14 can save multiple days and reduce errors. So  
15 physically, literally sitting in the office and  
16 watching the process and them coming up with ways to  
17 automate and improve that process.

18           Q. So 40 percent of the time you spent did you  
19 say auditing and extrapolating data, or was it  
20 auditing and -- something that starts with an "e"  
21 data.

22           A. So when you think about it, you enter it.  
23 Now it's in the system. You have to pull it back  
24 out for reporting. And so the different reports  
25 that were already being created, if you have a whole

1 pie that you pull out and you put it into the report  
2 and you only have a half of a pie, you'll never get  
3 a proper picture. So you have to take the report  
4 and look at the raw data and literally compare them  
5 to see if two is on one and two is on the other, so  
6 that they're equal.

7 Q. And when you were looking at this data did  
8 you notice any discrepancies or issues with any  
9 reports that had been issued in the past?

10 MR. PERLOWSKI: Object to the form;  
11 foundation. You can answer.

12 A. Yes. I always find that. I did find that.  
13 I think there's degrees of finding it, right, if  
14 that makes sense. So it's a very precise art. So,  
15 yes, I did find things.

16 Q. Can you tell me some of the things you  
17 recall you found?

18 A. Expenses that weren't being pushed over,  
19 expenses that weren't allocated properly, and entire  
20 expenses that would hit one bucket should have got  
21 cascaded to three buckets. Maybe a revenue that had  
22 ten components had only trickled in nine of the  
23 components. One of components was not brought in  
24 because it was considered -- you know, when you book  
25 in revenue, you book it under buckets, and so it's

1        contra revenue. It's not as simple as just revenue  
2        was missed; it was a contra revenue. And so they  
3        didn't look in that contra revenue, things of this  
4        nature.

5            Q. Did any of these issues that you found  
6        relate to the 2018 financial statements of NAF?

7            A. Not to the corporate financial statements,  
8        no.

9            Q. Just some other financial statements than  
10       the corporate financial statements?

11          A. Well, you really only have two: Corporate  
12       financial statements, outward facing corporate  
13       financial statements that are audited by third  
14       parties, and you have internal reporting, right.  
15       Anything that's not going external would not be  
16       considered a financial statement; it would be an  
17       internal report if you will; where if any of the  
18       errors happened on internal reports, the cumulative  
19       data from an external facing perspective was  
20       accurate.

21          Q. So just to make sure I understand it, there  
22       were audited financial statements that were  
23       externally done, and there were no problems with  
24       those, correct?

25          A. Correct.

1 Q. There were some problems with internal  
2 reports, however, that were -- I think you used the  
3 word inward facing rather than outward facing,  
4 correct?

5 A. Correct.

6 Q. Which internal reports had issues as far as  
7 their correctness from your analysis?

8 MR. PERLOWSKI: Object to the form;  
9 foundation; mischaracterizes his testimony.  
10 You can answer.

11 A. Again, I would say -- I don't know how to  
12 answer the question. I'm a very particular person.  
13 All of them to varying degrees. I would say that  
14 conversion reporting from the Call Center, the cash  
15 reporting that wasn't leveraging and curtailings -- I  
16 could go through very technical things. I would say  
17 all of them to a degree.

18 When you look at -- I'll give you the most  
19 simple example that can happen. If you have a  
20 processor that gets paid \$100,000 and they do loans  
21 for two branches, if you take \$50,000 to each branch  
22 or does \$100,000 hit all one branch. And those  
23 allocations were not being done in a way that I  
24 agreed with. I guess you could find other people  
25 doing what I did and they would all slice it

1 different. I think their best practice and worst  
2 practice is somewhere in between. I would say some  
3 of these were done somewhere in between, and I think  
4 there was room for improvement.

5 Q. Did you review the 2018 internal reports  
6 once you became CFO?

7 A. I did. They were published through the  
8 intranet website if you will.

9 Q. When you reviewed those 2018 internal  
10 reports, did you find any errors on those 2018  
11 internal reports?

12 MR. PERLOWSKI: Object to the form. You  
13 can answer.

14 A. I feel the methodology was incorrect.

15 BY MR. HARGROVE:

16 Q. Can you tell me what you felt was incorrect  
17 about the methodology with respect to the 2018  
18 internal reports?

19 A. It's hard without getting technical. I  
20 don't know how technical you want me to get. What I  
21 would say is there is a waterfall from the top of  
22 the regional on expenses all the way down to the  
23 branch, the loan officer for the loan. The  
24 allocation of costs from the top down had been a  
25 little bit imbalanced. The way you call -- when you

1 layer in costs you could look at regional profit  
2 level one, profit level two, profit level three, and  
3 the choice to look at one versus three will change  
4 how you visually view the results. And I think that  
5 they had been looking at what they would call  
6 regional level one or corporate level one versus  
7 corporate level three or regional level three to  
8 have more inclusions in it. So, yes, that's -- I  
9 think that is a technical term, but I think some of  
10 that data was there but the view in front of you  
11 would be with less allocations, and when you  
12 allocate down more it gives you a more holistic  
13 view.

14 Q. And your understanding as far as these  
15 allocations of the different types of expenses you  
16 talked about with respect to the 2018 internal  
17 reports, had that caused the company to believe that  
18 there had been funds misallocated in 2018?

19 MR. PERLOWSKI: Object to the form;  
20 foundation. You can answer.

21 A. That was before my time.

22 BY MR. HARGROVE:

23 Q. Mr. Frommert, did you have any discussions  
24 with anyone at NAF about a purported misallocation  
25 of funds -- let me start over.

1 Did you have any discussions with anyone at  
2 NAF about a purported misallocation with regard to  
3 the 2018 financials at NAF?

4 MR. PERLOWSKI: Object to the form and  
5 foundation. You can answer.

6 A. Yeah, it had come up that there had been a  
7 problem with some of the reports. Again, before my  
8 time. I don't know the details of that. I think  
9 that was months before my time.

10 Q. From whom did you learn there had been a  
11 problem with reports?

12 MR. PERLOWSKI: Object to the form;  
13 foundation. You can answer.

14 A. I think Jason O'Bradovich, Kristin Ankeny  
15 would be the two people that had mentioned it.

16 BY MR. HARGROVE:

17 Q. Jason O'Bradovich and who was the second  
18 one?

19 A. Kristin Ankeny. She worked for him.

20 Q. What did they tell you about the prior  
21 reports and the purported problems?

22 A. I think it basically goes back to what I  
23 was talking about before, levels of profitability.  
24 They call it corporate margins, CM; CM1, CM2, CM3.  
25 And I think effectively the discussions that I

1 understood were that the focus was on CM1, and CM3  
2 was there but nobody talked about it, but it was  
3 visible. That was the talk that I recall, having --  
4 that there was multiple levels of corporate margin  
5 and that the final level, CM3, had all of the  
6 allocations and CM1 did not. And that's the extent  
7 of my knowledge.

8 Q. So the internal report for 2018 before you  
9 got there did not contain all of the expenses; is  
10 that correct?

11 MR. PERLOWSKI: Object to the form;  
12 foundation; mischaracterizes his testimony.  
13 You can answer.

14 A. Can you repeat the question?

15 BY MR. HARGROVE:

16 Q. Sure. In 2018 there were internal reports  
17 that you ultimately reviewed, correct?

18 A. Correct.

19 Q. And you told me you had discussions with  
20 Mr. O'Bradovich and a young lady who worked for him  
21 about those reports, correct?

22 A. Correct.

23 Q. And there was discussion about the  
24 different types of corporate margins, CM1, CM2, and  
25 CM3, correct?



1 A. Yes.

2 Q. And in those reports CM3 would have been a  
3 more encompassing category of expenses; is that fair  
4 to say?

5 A. Yes.

6 Q. Was CM3 included on the internal reports  
7 for 2018?

8 A. No. So let's go back. There's an internal  
9 intranet site known as Keblar that these were  
10 published, and you can look at the results and you  
11 can look at the bottom line. But what publishes out  
12 there and sits there doesn't have all those layers I  
13 don't believe, to my best recollection, but I cannot  
14 recall. That was four years ago. I think there's  
15 simply one CM number.

16 I believe there was calls. We all had  
17 calls. I had calls on my models, and you go through  
18 more details on versus what's visible there. So I  
19 can't recall if there was CM2, CM3 on there.

20 My goal in reviewing those was really  
21 unrelated. I'm building what I'm building, and it's  
22 my way of doing it that I feel is the future. And I  
23 would have to look at this and see where there's a  
24 disconnect, and that's where those conversations  
25 happened.

1 Q. Did you have any discussions with anyone  
2 else at NAF about CM1, CM2 and CM3 and the 2018  
3 internal reports?

4 A. Just a very brief -- Rick Arvielo was my  
5 boss, the president and CEO, whatever his role is  
6 there, exact title I don't recall. Just my  
7 progress, my goals and what I was building, what it  
8 looked like and what they use to have, quick  
9 characters -- you know, you have a 30-minute  
10 once-a-week meeting and you have 20 things to go  
11 through. You give him a five-minute digest on this  
12 piece of it. It's pretty brief. Here's what I'm  
13 building, here's what it looks like, here's how it's  
14 different than what you used to have.

15 Q. Did you tell Mr. Arvielo or anyone else  
16 that the 2018 internal reports had problems with  
17 them with respect to the way expenses were  
18 allocated?

19 A. I would not say I put it in those words,  
20 but I talked about it in a way that I felt was  
21 appropriate.

22 Q. Tell me about --

23 A. You're not going to go into an owner's  
24 office and say -- you're a new hire. You're a new  
25 CFO. You're not there to rip down everything else.

1 And I don't really characterize it as terrible or  
2 good. It's, look, here's how you had built it, and  
3 you have, you know, five ladder rungs and you should  
4 have had six in my opinion, and here's the value of  
5 six. Look at your five, look at my six. This is  
6 what I'm building. Do you agree. Are you okay with  
7 this. And so it becomes those types of talk tracks  
8 with an owner. Again, be it him or anybody else,  
9 they don't want to get that level of technicality.  
10 But I would say -- so you go in and say this is my  
11 experience, this is what I want to build, this is  
12 why it looks this way, this is what was built,  
13 here's the differential between them, here's how  
14 this is going to impact the future, so he understood  
15 what that may look like. I don't think I would have  
16 characterized it the way you're looking at it. Does  
17 that make sense? It's very technical.

18 Q. Did you tell Mr. Arvielo or anyone else at  
19 NAF that the way the 2018 reports were prepared was  
20 wrong?

21 A. I would say I didn't agree with them.

22 Q. And you told Mr. Arvielo you didn't agree  
23 with them?

24 A. I think we would probably dovetail into 100  
25 little conversations about examples; if you looked

1 at expenses, how you could cascade those expenses.  
2 An example, if you take credit cards and you run  
3 credit card billing at the corporate level, that's  
4 an expense. If that credit card usage is, you know,  
5 assuming all volume was equal, but the credit card  
6 usage was 70 percent east coast and 30 percent west  
7 coast, you do not want to allocate your expenses  
8 50/50. It wouldn't be appropriate. It should be  
9 based on usage. So examples where mathematically if  
10 you took 50/50, you're over-allocating to one and  
11 under-allocating to another. It would be more  
12 mathematically appropriate to do the 70/30 based on  
13 utilization. And those little differentials over 50  
14 buckets can create a more precise art.

15 Q. Did you have an understanding as to who was  
16 responsible for the preparation of the 2018 internal  
17 reports?

18 A. To the best of my knowledge there was a  
19 team of several people, Kristin, Jason, that team of  
20 people.

21 Q. Did you provide criticism to Mr. Arvielo or  
22 anyone else at NAF about that team or Mr.  
23 O'Bradovich or Kristin's work on those internal  
24 reports?

25 A. In a delicate way.

1 Q. Tell me how you did that in a delicate way.

2 A. You know, it's corporate politics. You  
3 don't want to go out and say -- I think you did a  
4 really good job based on what they have. But if you  
5 look at -- specifically it's called activity-based  
6 costing. Activity-based costing methodologies,  
7 there's several specific techniques that you're  
8 going to want to use that I don't believe, when  
9 you're picking between cost per unit, you know,  
10 basis points, how you're going to derive an  
11 allocation, I would pick this based on this  
12 reasoning, and this is what was used before, and I  
13 think that that created disproportionality, if you  
14 will.

15 Q. And I recognize you informed him in a  
16 delicate way. But as we sit here today, without the  
17 need to be delicate, can you tell me what the  
18 criticisms were of the 2018 internal reports?

19 A. I don't know if I'm being compelled to, but  
20 I would really rather not get into how I feel about  
21 that. Is that a mandatory requirement here today?

22 Q. You're under subpoena, so...

23 A. At the end of the day I think Jason was ill  
24 prepared to create these. I think his -- he did a  
25 decent job, probably better than most mortgage

1 banks, probably better than many people do. I think  
2 that when you looked at -- when you build this --  
3 I'm just going by education and background. I built  
4 this for JP Morgan Chase. It's a different level of  
5 discipline and precision. I don't think most people  
6 have that, so I'm going to be more critical. I  
7 don't think that what he had was poor, but I  
8 wouldn't rank it above a C if you're giving it a  
9 grade. Maybe a C plus. That doesn't mean it's a D  
10 or an F.

11 Q. Did you express criticisms of Mr.  
12 O'Bradovich, other than what you've told me, the  
13 delicate statements you made earlier?

14 MR. PERLOWSKI: Object to the form. You  
15 can answer.

16 A. There was an ongoing dialogue with Rick  
17 about my concern.

18 Q. And was Mr. Arvielo receptive to your  
19 concerns about the work that Mr. O'Bradovich had  
20 done?

21 A. Yeah, I think he -- he wanted to understand  
22 it. He wanted to know how to improve his business.  
23 I think he takes pride in his business. He's a guy  
24 that wants to constantly improve his business. He's  
25 not out -- yes, I think he listened. I don't think

1 he would want to get into the personal Jason versus  
2 Scott or any of that stuff. He just wants the end  
3 result, right. He's a business owner.

4 Q. Did you get along with Mr. O'Bradovich  
5 during the time you all were both employed at NAF?

6 A. No.

7 Q. No. Okay. Tell me what was the source of  
8 the friction?

9 A. He built a model that effectively I was  
10 coming to rebuild, and I don't think that sits well  
11 with anybody. It creates a little bit of tension  
12 out of the gate.

13 Q. And did you have discussions at all with  
14 Mr. Arvielo about this tension between you and Mr.  
15 O'Bradovich?

16 A. Yes.

17 Q. Tell me about those discussions.

18 A. I don't know that I can. Can I talk about  
19 that? I have an NDA in place about this topic.

20 MR. PERLOWSKI: Do not reveal testimony  
21 that you believe would give you concerns on  
22 your NDA, Mr. Frommert.

23 MR. HARGROVE: Do we have a copy of the  
24 NDA? Because most of them say that if you're  
25 subpoenaed, that's an exception to the NDA. Do

1           you have a copy of the NDA? And we have a  
2           protective order in this case.

3           A. What I would say is I'm not comfortable  
4           talking about it. I believe that this breaches my  
5           NDA.

6                       MR. HARGROVE: Henry, do you have a copy  
7           of the NDA?

8                       MR. PERLOWSKI: I do not.

9                       MR. HARGROVE: Let's take a brief  
10          five-minute break and then we'll come back.

11                      (Recess 1:00 p.m. - 1:08 p.m.)

12          BY MR. HARGROVE:

13               Q. Thanks for indulging me on the break, Mr.  
14          Frommert.

15                      You said you have a copy of that NDA; is  
16          that correct?

17               A. Somewhere. Literally probably in a box in  
18          my garage.

19               Q. Would you be willing to provide a copy of  
20          that to counsel for the Plaintiff?

21               A. Not a quick notice, but I could probably  
22          dig it up. Literally, it's probably packed in a  
23          box. I don't even know which box. It would be a  
24          process.

25               Q. Okay. Well, we would ask that you do that.



1 And we're going to ask you some other questions  
2 today, but we're going to, at the end, adjourn your  
3 deposition but not conclude it in case we visit with  
4 the Court whether certain questions that you don't  
5 want to answer due to the NDA, whether you could be  
6 compelled to answer those or not. So if you could  
7 provide that document to us -- we can subpoena it,  
8 but if you'll voluntarily provide it to us, that  
9 would be easier since you've agreed to do --

10 MR. PERLOWSKI: First of all, let me say  
11 no subpoena was served -- no document request  
12 was served with the subpoena, correct?

13 MR. HARGROVE: Correct.

14 MS. GIBSON: We didn't ask for it. We  
15 can serve a subpoena for the NDA. We weren't  
16 aware that there was one. So we can serve a  
17 subpoena asking for --

18 MR. PERLOWSKI: I believe there was  
19 prior deposition testimony confirming that  
20 there was an agreement in place. But  
21 irrespective, I cannot give Mr. Frommert advice  
22 on this issue because his agreement would be  
23 with NAF. So we're going to reserve our  
24 position regarding that issue.

25 MR. HARGROVE: Okay. Fair enough.

1 MR. PERLOWSKI: I just want to put that  
2 on the record.

3 MR. HARGROVE: Fair enough.  
4 BY MR. HARGROVE:

5 Q. Mr. Frommert, just to confirm, you said you  
6 would look for that document and provide it to us,  
7 correct?

8 A. Yes, to the best of my recollection -- I  
9 will look for it. I'm not 100 percent -- it's like  
10 with a bunch of tax documents and everything else.  
11 I'm not the best record-keeper of my own personal  
12 stuff. I will do my best to find it.

13 Q. Thank you.

14 Were there any discussions around NAF about  
15 a misallocation of funds that had purportedly  
16 occurred with respect to 2018?

17 MR. PERLOWSKI: Object to the form;  
18 foundation. You can answer.

19 By the way, Mr. Frommert, I should have  
20 cautioned you, because Mr. Hargrove did not  
21 mention this at the outset. I'm not saying  
22 that this is true with respect to this  
23 question, but if you had conversations with  
24 NAF's legal counsel regarding an issue, I would  
25 ask that you not disclose those. But subject

1 to that, you can answer.

2 A. Well, 2018 was a complicated year. It's  
3 twofold. One is the business -- the mortgage  
4 business as a whole industry shifted. There was a  
5 compression of margins, so I think there was a lot  
6 of discussions around that, right. A time like that  
7 is a great time to hire a CFO, part of which I think  
8 encouraged them to bring me on board. So that was a  
9 catalyst, so I think it's worth stating.

10 I think misallocation of funds goes back to  
11 my characterization of CM1 versus CM3. Again,  
12 before my time. My understanding was they had  
13 looked at CM1 and discussed the CM1, but CM3 was  
14 there. That's how I understood it. I wasn't there  
15 for that. I don't know that I was there to say  
16 whether there was a misallocation of funds. I  
17 simply believe that there was a view of CM1 versus  
18 CM3.

19 Q. So that wasn't exactly my question. My  
20 question was were there discussions between you and  
21 others at NAF about -- and using the words  
22 specifically misallocation of funds for 2018?

23 A. Not that I recall.

24 MR. PERLOWSKI: Object to the form;  
25 foundation; asked and answered. You can answer

1 again, Mr. Frommert.

2 A. Not that I recall.

3 BY MR. HARGROVE:

4 Q. So no one at NAF, in discussions with you,  
5 referred to a misallocation of funds related to  
6 2018?

7 MR. PERLOWSKI: Objection; asked and  
8 answered; foundation. You can answer again,  
9 Mr. Frommert.

10 A. Not that I recall.

11 BY MR. HARGROVE:

12 Q. Do you have any knowledge about a  
13 leadership meeting that took place in February 2019  
14 prior to your coming on board at NAF?

15 A. Yes, I'm aware that there was, I believe,  
16 an on-site leadership meeting prior to me joining.

17 Q. And do you have any awareness as to whether  
18 misallocation of funds was discussed in that  
19 meeting?

20 MR. PERLOWSKI: Object to the form;  
21 asked and answered; foundation. You can go  
22 ahead and answer.

23 A. Again, before my time. I wasn't there. I  
24 don't recall them specifically talking about  
25 misallocation of funds per that meeting or that that

1 was a topic in that meeting specifically.

2 Q. How about any incorrectness on the 2018  
3 either -- let me go back.

4 Did you have discussions with anyone at NAF  
5 about, at that leadership meeting, it being conveyed  
6 that the internal financial reports were not  
7 accurate?

8 MR. PERLOWSKI: Object to the form;  
9 foundation. You can answer.

10 A. No, that was not -- that's not what my  
11 understanding is. My understanding of the meeting  
12 was the mortgage market shifted, one; two, we  
13 thought we were making money, and we were not. As  
14 to why -- I think you're talking -- I don't know  
15 that part. There was no misallocation or  
16 inaccuracies. We thought we were making money. We  
17 were not. That's my understanding. That's what I  
18 know about that meeting.

19 Q. And was it ever conveyed to you why NAF  
20 thought it was making money but it was not, for the  
21 2018 year?

22 A. I don't know I'm clear on why that exactly  
23 happened. I think I probably couldn't be specific  
24 enough to say why.

25 Q. Who was it who told you about NAF thinking

1 it made money but in fact it did not for 2018?

2 A. It was mentioned by both Jason and Rick.

3 Q. Jason and Rick. And in your review of the  
4 2018 financial documents did NAF in fact make money  
5 or did it not?

6 A. Let me answer -- the outside division, this  
7 group, this segment of the business had lost money.  
8 There are other segments of the business, there are  
9 other revenue streams as a whole that may make  
10 money. So there are other pieces when you look at  
11 an internal report and you look at a pie. This is a  
12 piece of that pie. So I think we need to be very  
13 clear when we're talking, are we talking about this  
14 piece of the pie or are we talking about the whole  
15 pie, because there are different results.

16 Q. I'm talking about the piece right now, the  
17 branch that Ms. Spearman was a part of. That's OLA,  
18 correct?

19 A. Correct.

20 Q. So OLA was not profitable for 2018,  
21 correct?

22 A. Correct.

23 Q. Did you review the documents for -- well,  
24 let me go back. Did you see any documents for 2018  
25 that would have indicated otherwise in your review

1 of the 2018 documents?

2 MR. PERLOWSKI: Object to the form. I'm

3 sorry. Could you please repeat that question?

4 BY MR. HARGROVE:

5 Q. In your review of the 2018 documents, the  
6 internal financial documents, did you review any  
7 documents which would have contradicted the fact  
8 that OLA did not make a profit?

9 A. I'll try to be specific here. Keblar had  
10 the financial records for the division, which I  
11 exported those into Excel, and they had the bottom  
12 line that showed CM1, 2, and 3, from which I could  
13 see all the components of this from the model and  
14 see that there was no profit made at the CM3.

15 Q. Are there documents that you reviewed in  
16 2018 that would have shown a profit for that  
17 division?

18 A. Not --

19 MR. PERLOWSKI: Object to the form.

20 BY MR. HARGROVE:

21 Q. There were not any?

22 A. Not that I recall.

23 Q. Do you have any idea then how Mr.  
24 O'Bradovich or others within NAF would have believed  
25 that NAF made money in 2018 when in fact it didn't?

1 MR. PERLOWSKI: Object to the form;  
2 speculation; foundation. You can answer if you  
3 can.

4 A. I would be speculating. I don't know how  
5 they came to that conclusion.

6 Q. But you never saw any documents in your  
7 review of all the 2018 internal reports that  
8 indicated that NAF had a profitable 2018?

9 A. OLA, I'll be specific, the ones I saw  
10 showed that they did not.

11 Q. And do you know whether those have been  
12 altered or changed in any form?

13 A. I do not. It is not a report. As it's  
14 being conveyed, it is an online tool that is  
15 uploaded through a server.

16 Q. How about the southeast region, did you do  
17 any reviews to find out whether the southeast region  
18 of the OLA was profitable?

19 A. Based on the current numbers that were  
20 being provided in Keblar, absolutely.

21 Q. And was it profitable in 2018?

22 A. I can't say I recall if any one region --  
23 because my goal was not -- there was -- I would have  
24 to say that when I joined in 2019 I was looking at  
25 more recently the last six months, which include



1 some of 2018 but not early 2018 or mid 2018, if that  
2 makes any sense.

3 Q. Did you have --

4 A. You had a market that dipped and you lost  
5 money and it picked back up again. So I'm looking  
6 at now we're having this run rate, and I'm talking  
7 to people about how they're going to get compensated  
8 based off of now, not off of history. So I didn't  
9 have a heavy focus on history as much as more  
10 recently.

11 Q. When you came on board did it have anything  
12 to do with the fact that there were errors in the  
13 internal financial documents for 2018 prior to you  
14 coming on board?

15 MR. PERLOWSKI: Object to the form;  
16 foundation; speculation. You can answer if you  
17 can.

18 A. My understanding is that I was to spend a  
19 great deal of my time building a branch  
20 profitability model.

21 Q. Did anyone from NAF tell you that there  
22 were errors, mistakes or omissions of any sort in  
23 the 2018 internal financial documents at some point  
24 before you came on board?

25 A. Just the previously disclosed where I

1       talked to Jason and Rick, brief conversations  
2       between them on, you know, going back to the  
3       meeting, we thought we were making money, we weren't  
4       making money. We had a meeting. We talked about  
5       the new market, the new market conditions. And I  
6       don't know if that answers your question  
7       specifically.

8               Q. In that meeting was there a discussion  
9       about why the company thought it was making money  
10      but in fact wasn't making money?

11              MR. PERLOWSKI: Object to the form;  
12      foundation.

13              A. CM1, CM3 was -- the way I would say this,  
14      Rick said -- I think he was looking at the CM1 and I  
15      think Jason was looking -- I'm speculating. Rick  
16      and Jason told me slightly different stories of how  
17      they ended up there. I think there was some maybe  
18      rapid market movement -- let's just be very clear,  
19      rapid market movement happened where businesses  
20      started taking a loss. And I think when you look at  
21      one versus the other, there's very little  
22      differentiation, and it becomes more important to  
23      look at both routinely.

24              Q. I want to change gears a little bit. Were  
25      you involved in creating a profit and loss model for

1 the regional managers at NAF? Was that part of your  
2 duties?

3 A. Yes.

4 Q. How did you go about creating that model?

5 A. Pretty simple. You create a P and L for  
6 the region based on best practices. And I'll give  
7 you the simplest example I can. Let's just say that  
8 Gina inside that model is paid one dollar, and let's  
9 say the business profits one dollar. You remove her  
10 one dollar of salary, you put it as if she never got  
11 paid, and now the business makes two dollars. And  
12 you create a split of 50/50, and everybody still  
13 gets one dollar and one dollar. That way going  
14 forward everybody is on the same page. So step one,  
15 just create a branch profitability model. Step two,  
16 extract her income, and then come up with a math  
17 equation that effectively gives her an equal  
18 percentage as if you split the bottom line, be it 30  
19 percent, 50 percent, whatever that number is.

20 Q. And in creating that profit model,  
21 profit/loss model do you have to go back and look at  
22 any of NAF's prior financial documents?

23 A. I extracted historical accounting data.

24 Q. Did you have everything that you needed to  
25 prepare that profit and loss model for NAF?

1           A. As good as any company probably has. I  
2           mean there's steps you've got to close more gaps on,  
3           but yes.

4           Q. As the CFO were you provided with all of  
5           the financial information about NAF that you asked  
6           the company for?

7           A. I'm going to defer to my NDA.

8           Q. You're going to defer to your NDA?

9           A. I'm uncomfortable, because, look, I don't  
10          want to be in a position with NAF, right, so what I  
11          would say is I asked Jason for detailed revenue  
12          data. I wasn't always given it. We butted heads a  
13          little bit, and there's tension there. And so it  
14          gets into a gray area I'm not comfortable talking  
15          about.

16          Q. So just so we're clear on the record, you  
17          were asked whether you were given all the  
18          information and the response to the question is  
19          you're not going to answer the question because of  
20          your NDA, correct?

21                 MR. PERLOWSKI: Object to the form;  
22                 mischaracterizes what Mr. Frommert said. He  
23                 asked for detailed revenue data. He didn't  
24                 always get it. It's a gray area. He's not  
25                 comfortable talking about it.

1 BY MR. HARGROVE:

2 Q. So that's the extent -- that you're not  
3 willing to give any details based on your NDA about  
4 that; is that correct?

5 A. That's correct.

6 Q. Let's go back to this P and L model. When  
7 you prepared this P and L model was it across the  
8 board or was there one specific to, say, Ms.  
9 Spearman that was prepared?

10 A. The same methodology was used in all  
11 regions for all regional managers. There was a  
12 slight difference between her region and other  
13 regions where she and Kelly split the region. That  
14 was the only differential.

15 Q. And in your preparation of that model you  
16 ultimately were involved in the meeting where that  
17 was presented to Ms. Spearman and Ms. Allison,  
18 correct?

19 A. Correct.

20 Q. Did you prepare any materials in advance of  
21 that meeting that were to be used in the meeting?

22 A. A one-page picture of exactly what we  
23 talked about before, the P and L with her money  
24 inside of it, the P and L with her money extracted,  
25 and then the split to show that it was equal.

1 Q. So how was that presented to Ms. Spearman?

2 A. A computer. Plugged it in and put a Power  
3 Point type screen up, something to that effect. I  
4 mean four years ago, I don't exactly recall.

5 Q. And you said a Power Point, so was there a  
6 Power Point slide show that was --

7 A. A single page to my best recollection.  
8 But, yes.

9 Q. And it was put into Power Point, correct?

10 MR. PERLOWSKI: Object to the form.

11 A. To my best recollection.

12 BY MR. HARGROVE:

13 Q. Do you know what has happened to that Power  
14 Point?

15 A. No.

16 Q. Do you have a copy of it?

17 A. I would not.

18 Q. Is it something you would have emailed to  
19 anyone within the company?

20 A. I generally did not email these before I  
21 went; so, no, probably not.

22 Q. When you say you didn't email, you mean to  
23 Ms. Spearman and Ms. Allison or do you mean to  
24 anyone within NAF?

25 A. I mean certainly to Ms. Spearman or

1 Allison. I don't recall emailing it to anyone  
2 though.

3 Q. Did you save that document on your laptop  
4 computer?

5 A. Most likely, but I do not recall  
6 specifically.

7 Q. Did you ever delete that document from your  
8 laptop computer?

9 A. I don't recall.

10 Q. You don't know?

11 A. No. I hate to say, but you do a thousand  
12 documents a year. It's just really hard to track  
13 what you did four years ago in one document.

14 Q. Sure. So tell me what you recall about  
15 this meeting that you had in person with Ms.  
16 Spearman and others where this Power Point was  
17 shown.

18 A. It was lively --

19 MR. PERLOWSKI: Object to the form;  
20 foundation. You can answer.

21 A. You know, you fly into a city you haven't  
22 been in a while to meet people you're hoping to  
23 build a relationship with, and you have a belief  
24 that you're putting something in front of them  
25 that's going to benefit them. And they had an

1 attorney and a CPA in the room, and it was almost  
2 immediately somewhat confrontational, the best I can  
3 recall. And I think what they were trying to  
4 understand is was this a fair deal, was this an  
5 equal deal, was this a better deal. I think they  
6 brought in people to help them feel that that was or  
7 was not true, right. Maybe not the experts on that.  
8 I don't recall the exact length, but if I had to  
9 guess, an hour and a half. It wasn't too long, too  
10 short. It was myself, and Jon Reed flew in. I  
11 think we flew in the night before, if I recall, and  
12 in the morning had a presentation of this one page,  
13 but basically said, look, the market shifted, the  
14 company started to lose money. Companies thrive  
15 better when the regionals are aligned and marching  
16 in the same direction. This is how we do this and  
17 this is the new compensation plan that we're putting  
18 in front of you. That was the gist of the meeting.

19 There was a lot of back-and-forth questions  
20 between the CPA and the attorney of how could it be  
21 mathematically accurate, all those types of things.  
22 And that's probably the best characterization I can  
23 give.

24 Q. Did NAF take either outside or internal  
25 legal counsel to this meeting?



1           A. Not that I recall. I think it was just me  
2 and Jon.

3           Q. Did you have any discussions with either  
4 outside or internal NAF counsel prior to the  
5 meeting?

6           A. Not that I recall.

7           Q. When you prepared this document were you  
8 contemplating there might be litigation about this  
9 document?

10          A. That didn't cross my mind at the time at  
11 all.

12          Q. Did you have any discussions with anyone  
13 from NAF who went to this meeting about  
14 contemplation of litigation?

15          A. I mean the only person in the meeting was  
16 me and Jon. No. I was more thinking that they were  
17 going to quit.

18          Q. Was there transparency of the numbers to  
19 support the new profit and loss model you presented?

20               MR. PERLOWSKI: Object to the form.

21          A. I believe so. I mean I made it, so I guess  
22 I'm biased, but I think so.

23          Q. Were there any comments about that from Ms.  
24 Spearman or Ms. Allison?

25          A. Yeah, I think -- I've been doing this a

1 long time and there's always those comments; one,  
2 that there's a disbelief, how can you know, how can  
3 they audit it, how can they trust when you're giving  
4 them a dollar that it was only maybe costing you 89  
5 cents. Yeah, I think those questions came up.

6 Q. And do you believe that they were given  
7 satisfactory explanations?

8 A. Again, I'm biased, right. I did my best  
9 to give that information. Do I feel like they were  
10 satisfied? That's probably a different question. I  
11 don't know that I satisfied them, because they were  
12 frustrated at that moment. I felt towards the end  
13 it got better, but maybe that's my perception.

14 Q. So earlier you testified that you had an  
15 issue with Mr. O'Bradovich about getting all the  
16 information you asked for, correct?

17 A. Correct.

18 Q. Was any of that information something that  
19 was needed for this P and L model for Ms. Spearman?

20 MR. PERLOWSKI: Object to the form;  
21 foundation.

22 A. There's two components, just keeping it as  
23 simple as possible, revenue and expense. Revenue is  
24 when you're selling the loans, all the aspects of  
25 that. But when I talk about the four, nine, ten

1 units, did you get comp'd for all ten or just nine  
2 and all aspects of that, I felt confident enough  
3 that it was -- in what we do. When you talk about a  
4 400 million dollar company, is it accurate if  
5 there's one penny off of 400 million. I felt it was  
6 -- everything I did mathematically showed that it  
7 was in range.

8 Q. And how were you able to reach that  
9 conclusion when you weren't provided everything you  
10 had asked Mr. O'Bradovich for?

11 MR. PERLOWSKI: Object to the form. You  
12 can answer.

13 A. Industry averages, normal numbers. I've  
14 been doing this 10 years. If you see 370 in a block  
15 that's always been 370 or you see 367, 373, you know  
16 you're at least close. I think from what I do I try  
17 to get as close as possible and as many things. And  
18 nothing is ever absolute. There's just not an  
19 absolute in this.

20 Would I say I felt 100 percent, no, but I  
21 felt pretty good or I wouldn't have published it.  
22 There's degrees of pretty good to perfection. I  
23 would love to be perfect, and I push towards and  
24 strive towards that. But, you know, I think I had  
25 good data. I think more importantly -- for what

1 it's worth, this is a very important fact, whether  
2 -- even if it was significantly off, if I give her  
3 50 percent of something that's significantly wrong,  
4 and the significantly wrong stays consistent, then  
5 the income still stays consistent, if that makes any  
6 sense at all.

7 So from an income perspective I felt good  
8 about the model, the consistency of the model  
9 delivering very consistent results as long as the  
10 baseline stayed the same.

11 Q. Did you ever hear anyone at NAF say the  
12 girls make too much money?

13 A. Not that I recall. A lot of them make good  
14 money. I don't recall hearing the girls make good  
15 money, no.

16 Q. How about anyone in NAF, whether using  
17 those exact words or not, but expressing that they  
18 felt Ms. Spearman and Ms. Allison made too much  
19 money?

20 A. Not too much money, no. I think that in  
21 statements people say they make good money. I don't  
22 think I have heard anybody say they make too much  
23 money. And I think that distinction changes the  
24 statement significantly.

25 Q. At some point you departed from NAF,

1 correct?

2 A. Correct.

3 Q. Can you tell me what the circumstances  
4 behind your departure were?

5 A. I cannot.

6 Q. And why not?

7 A. Based on my NDA.

8 Q. Did it have anything to do with Mr.  
9 O'Bradovich and you not being provided the  
10 information that you felt you needed?

11 A. I don't feel it's appropriate to answer  
12 what it could or couldn't be and narrow it down to  
13 what it could be then, because I still am on that  
14 gray area of what the NDA is covering. And not  
15 being personally represented, I don't want to put  
16 myself at risk, unless somebody's either going to  
17 waive or rescind that.

18 Q. Were you given any sort of termination --  
19 well, were you terminated or did you leave?

20 A. I'm not a lawyer, guys. I don't know if my  
21 NDA covers that or not. I feel like we're playing  
22 on that edge, and it's making me uncomfortable. So  
23 unless somebody wants to advise me on that or go on  
24 the record, I am not comfortable with proceeding.

25 Q. Just so we're clear again, on the record,

1       you're not going to answer that question because of  
2       the NDA, correct?

3             A.   That is correct.

4             Q.   And so you said you're not personally  
5       represented.  Isn't Mr. Perlowski representing you  
6       in this deposition?

7                     MR. PERLOWSKI:  As I said, Travis, I  
8       cannot represent him with respect to these  
9       specific issues because NAF is the other  
10      signatory to the NDA, so I cannot give him  
11      guidance regarding whether to waive a  
12      confidentiality restriction or not.  NAF has  
13      agreed to provide counsel for Mr. Frommert for  
14      the purpose of the deposition generally, not  
15      knowing what topics you were going to get into  
16      or not.

17                    MR. HARGROVE:  Well, then what capacity  
18      (audio interference) because he's not an  
19      employee, so what material --

20                    MR. PERLOWSKI:  He's the former CFO of a  
21      company, Travis.  He's a former C level  
22      executive of a company.  Companies routinely  
23      provide counsel for their former executives  
24      when they're drug into matters.

25                    MR. HARGROVE:  And NAF drafted the NDA,

1 correct?

2 MR. PERLOWSKI: I have no idea.

3 MR. HARGROVE: So your position is you  
4 represent him in his -- except for in his  
5 capacity of the NDA? I just want to make  
6 sure --

7 MR. PERLOWSKI: I have clearly stated  
8 our representation of Mr. Frommert and what we  
9 cannot advise him on, period.

10 MR. HARGROVE: Is NAF willing to waive  
11 any argument regarding the NDA so he can  
12 testify then?

13 MR. PERLOWSKI: I haven't spoken with my  
14 client about whether it's willing to waive a  
15 confidentiality obligation or not. I told you  
16 I don't have the NDA. I'm not going to give  
17 advice to my client and make a spot decision  
18 because you decided to spring it in a  
19 deposition. I'm not going to do that.

20 You didn't subpoena the NDA. You  
21 haven't even requested it in a document request  
22 from us.

23 MR. HARGROVE: Mr. Frommert told us  
24 about the NDA in the deposition today. So if  
25 you represent him in the deposition, in any

1 event --

2 MR. PERLOWSKI: We can suspend the  
3 deposition given that we can't represent him as  
4 to this issue. Fine, we can do that.

5 MR. HARGROVE: Let's finish what doesn't  
6 deal with the NDA and we'll suspend it  
7 otherwise, and then we can cross that bridge.  
8 Because there's no reason not to finish what we  
9 have.

10 MR. PERLOWSKI: I have no problem with  
11 that. But if Mr. Frommert says he's not  
12 comfortable answering a question because of the  
13 NDA, that's the answer. I can't give him  
14 guidance on it.

15 MR. HARGROVE: I understand:

16 A. I just want to ask a quick question. If  
17 you can give me one minute.

18 MR. PERLOWSKI: Yes. Let's take a  
19 break.

20 (Recess 1:38 p.m. - 1:47 p.m.)

21 A. I guess I would just say after talking to  
22 him -- like I say, I'm good at math. Math people  
23 are really nerdy in one way, but we don't know  
24 anything about the law. And so what I'll say is I  
25 do want to honor an agreement I've made. And I feel



1       like some of these questions could hover in that  
2       area. And based on that I'm going to honor the NDA.  
3       I'm going to continue to stay on that topic, that  
4       there is a confidentiality agreement in place and I  
5       don't feel comfortable discussing some of those  
6       topics.

7                   MR. HARGROVE: I think at this point  
8       we'll go ahead and suspend the deposition  
9       subject to --

10                  MR. PERLOWSKI: That's fine. I'm happy  
11       to address that in good faith once I actually  
12       have the NDA or talk to NAF about it. And  
13       we'll address it promptly. I'm not trying to  
14       throw a monkey wrench into having this  
15       completed or even -- it may well be that we say  
16       we're okay with anything -- we have a  
17       protective order in this litigation. I just  
18       haven't seen it, so I don't want to do that on  
19       the spot. But let me chase that down with NAF  
20       internally and we can confer on how to best  
21       proceed in that regard. And I don't care, with  
22       respect -- I'll put this on the record, too, I  
23       recognize we have a discovery cutoff subject to  
24       other -- there's obviously pending motions that  
25       could conceivably impact that, but we can

1 address that, knowing you're suspending, very  
2 logically, in doing so.

3 MR. HARGROVE: All right, well, that's  
4 all the questions that we have today, Mr.  
5 Frommert. I don't know if Mr. Perlowski has  
6 any questions for you.

7 MR. PERLOWSKI: I don't.

8 (Signature reserved.)

9 (Deposition concluded at 1:50 p.m.)

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## CERTIFICATE

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

I have no relationship of interest in this matter which would disqualify me from maintaining my obligation of impartiality in compliance with the Code of Professional Ethics.

I have no direct contract with any party in this action and my compensation is based solely on the terms of my subcontractor agreement.

Nothing in the arrangements made for this proceeding impacts my absolute commitment to serve all parties as an impartial officer of the court.

Th:



2.

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Lucy C. Rateau, RPR, CCR 2766

1 To: Henry M. Perlowski, Esq.

2 Re: Signature of Deponent Scott D. Frommert

3 Date Errata due back at our offices: 30 days

4  
5 Greetings:

6 This deposition has been requested for read and sign  
7 by the deponent. It is the deponent's responsibility  
8 to review the transcript, noting any changes or  
9 corrections on the attached PDF Errata.

10 The deponent may fill out the Errata electronically  
11 or print and fill out manually. Once the Errata is  
12 signed by the deponent and notarized, please mail it  
13 to the offices of Veritext (below).

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\_\_\_ The following changes are noted:

Pursuant to Rule 30(7)(e) of the Federal Rules of Civil Procedure and/or OCGA 9-11-30(e), any changes in form or substance which you desire to make to your testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If additional pages are necessary, please furnish same and attach.

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Page 78

1 Page \_\_\_\_\_ Line \_\_\_\_\_ Change \_\_\_\_\_

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3 Reason for change \_\_\_\_\_

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18 DEPONENT'S SIGNATURE

19 Sworn to and subscribed before me this \_\_\_\_ day of

20 \_\_\_\_\_, \_\_\_\_.

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[04981 - allocation]

Page 1

<b>0</b>	<b>2019</b> 28:12 30:19 52:13 56:24	<b>7</b>	<b>address</b> 10:1,1 19:18 73:11,13 74:1
<b>04981</b> 1:6	<b>2020</b> 28:20	<b>7</b> 77:8	<b>addressed</b> 10:2
<b>1</b>	<b>2022</b> 1:15 75:23	<b>70</b> 44:6	<b>adjourn</b> 49:2
<b>10</b> 27:25 67:14	<b>2100</b> 3:17	<b>70/30</b> 44:12	<b>admin</b> 19:19
<b>100</b> 43:24 50:9 67:20	<b>230</b> 3:8	<b>770</b> 76:25	<b>advance</b> 61:20
<b>100,000</b> 36:20,22	<b>2766</b> 75:25	<b>8</b>	<b>advanced</b> 12:17 12:22
<b>12</b> 13:3	<b>28</b> 1:15	<b>8</b> 12:9	<b>advice</b> 49:21 71:17
<b>12:00</b> 1:16	<b>3</b>	<b>80</b> 23:15	<b>advise</b> 5:25 69:23 71:9
<b>14</b> 13:14	<b>3</b> 55:12	<b>89</b> 66:4	<b>affect</b> 8:25
<b>14th</b> 75:23	<b>30</b> 25:9 31:2,9 33:5 42:9 44:6 59:18 76:3 77:8	<b>9</b>	<b>ago</b> 17:8 21:19,22 26:21 41:14 62:4 63:13
<b>15</b> 28:1	<b>300</b> 76:23	<b>9</b> 12:9 22:15	<b>agree</b> 43:6,21,22
<b>171</b> 3:17	<b>30076</b> 76:24	<b>9-11-30</b> 77:9	<b>agreed</b> 36:24 49:9 70:13
<b>17th</b> 3:17	<b>30305</b> 3:9	<b>a</b>	<b>agreement</b> 27:22 49:20,22 72:25 73:4 75:19
<b>19</b> 4:2 28:20 29:3	<b>30363</b> 3:18	<b>a.m.</b> 22:15	<b>agreements</b> 12:20 24:2
<b>19546</b> 75:24	<b>343-9696</b> 76:25	<b>abiding</b> 8:18,20	<b>ahead</b> 7:21 52:22 73:8
<b>1:00</b> 48:11	<b>3535</b> 3:7	<b>ability</b> 8:25	<b>airport</b> 22:12
<b>1:08</b> 48:11	<b>367</b> 67:15	<b>able</b> 67:8	<b>align</b> 10:6
<b>1:20</b> 1:6	<b>370</b> 67:14,15	<b>absolute</b> 67:18,19 75:21	<b>aligned</b> 64:15
<b>1:38</b> 72:20	<b>373</b> 67:15	<b>absolutely</b> 56:20	<b>allison</b> 10:3 61:17 62:23 63:1 65:24 68:18
<b>1:47</b> 72:20	<b>4</b>	<b>accept</b> 27:7	<b>allocate</b> 38:12 44:7
<b>1:50</b> 74:9	<b>40</b> 31:5 33:18	<b>accepted</b> 27:9,10	<b>allocated</b> 34:19 42:18
<b>2</b>	<b>400</b> 67:4,5	<b>accident</b> 30:12	<b>allocating</b> 44:10 44:11
<b>2</b> 55:12	<b>404.873.8500</b> 3:19	<b>account</b> 30:2,8,9 30:12,15,16	<b>allocation</b> 37:24 45:11
<b>20</b> 29:4 42:10 76:23	<b>5</b>	<b>accountant</b> 20:13	
<b>2003</b> 12:12	<b>5</b> 2:9	<b>accounting</b> 20:15 23:20 25:5,13 31:2,17,25 32:1 33:5 59:23	
<b>2005</b> 13:14	<b>50</b> 18:18 44:13 59:19 68:3	<b>accurate</b> 28:16,18 35:20 53:7 64:21 67:4	
<b>2009</b> 12:9	<b>50,000</b> 36:21	<b>acknowledge</b> 29:19	
<b>2010</b> 13:14	<b>50/50</b> 44:8,10 59:12	<b>action</b> 75:12,18	
<b>2018</b> 35:6 37:5,9 37:10,17 38:16,18 39:3 40:8,16 41:7 42:2,16 43:19 44:16 45:18 50:16 51:2,22 52:6 53:2 53:21 54:1,4,20,24 55:1,5,16,25 56:7 56:8,21 57:1,1,1 57:13,23	<b>6</b>	<b>activity</b> 45:5,6	
	<b>6</b> 12:3 13:14	<b>add</b> 20:21	
	<b>66</b> 12:3	<b>additional</b> 23:3 77:14	

<b>allocations</b> 36:23 38:11,15 40:6 <b>altered</b> 56:12 <b>american</b> 1:8 5:8 6:18,21 10:5 11:7 11:9 <b>analysis</b> 36:7 <b>analytics</b> 32:2 <b>analyzing</b> 33:7 <b>andrew</b> 3:24 <b>ankeney</b> 39:14,19 <b>answer</b> 7:21 8:11 22:2 25:2 26:17 29:17 32:23 34:11 36:10,12 37:13 38:20 39:5,13 40:13 46:15 49:5 49:6 50:18 51:1 51:25 52:8,22 53:9 54:6 56:2 57:16 60:19 63:20 67:12 69:11 70:1 72:13 <b>answered</b> 51:25 52:8,21 <b>answering</b> 26:19 72:12 <b>answers</b> 7:14 58:6 75:6 <b>anybody</b> 43:8 47:11 68:22 <b>anytime</b> 7:19 <b>anyway</b> 8:11 <b>appearances</b> 3:1 <b>appearing</b> 5:9 <b>appreciate</b> 5:8 7:21 <b>appropriate</b> 42:21 44:8,12 69:11 <b>approximately</b> 18:25 20:2,8 29:7	33:6 <b>april</b> 28:10,10,20 28:22 29:3 30:18 <b>area</b> 10:4 13:8 22:19 60:14,24 69:14 73:2 <b>areas</b> 13:10 <b>argument</b> 71:11 <b>arizona</b> 11:25 12:5 22:11 <b>arnall</b> 3:16 <b>arrangements</b> 75:20 <b>art</b> 34:14 44:14 <b>arvielo</b> 42:4,15 43:18,22 44:21 46:18 47:14 <b>arvielo's</b> 23:1 25:15 26:15 <b>arvielos</b> 20:6 <b>asked</b> 51:25 52:7 52:21 60:5,11,17 60:23 66:16 67:10 <b>asking</b> 23:16 49:17 <b>aspects</b> 66:24 67:2 <b>assignment</b> 77:1 <b>assist</b> 77:13 <b>assuming</b> 29:18 44:5 <b>assure</b> 31:6 <b>atlanta</b> 1:2 3:9,18 13:8,10 <b>attach</b> 77:15 <b>attached</b> 76:9 <b>attorney</b> 64:1,20 75:11 76:15 <b>audio</b> 70:18 <b>audit</b> 66:3 <b>audited</b> 31:18,20 35:13,22	<b>auditing</b> 31:5 33:19,20 <b>automate</b> 33:17 <b>automatically</b> 33:11,13 <b>automation</b> 25:11 31:4 32:16 <b>averages</b> 67:13 <b>aware</b> 49:16 52:15 <b>awareness</b> 52:17 <b>b</b> <b>b</b> 1:8 <b>back</b> 10:8,14 12:4 21:12 28:4,11,14 30:6 33:23 39:22 41:8 48:10 51:10 53:3 54:24 57:5 58:2 59:21 61:6 64:19 76:3 <b>background</b> 7:6 11:23 17:10,14,19 23:13 46:3 <b>bankruptcy</b> 14:3 <b>banks</b> 24:10 31:10 46:1 <b>barrett</b> 12:1 <b>based</b> 44:9,12 45:4 45:5,6,11 56:19 57:8 59:6 61:3 69:7 73:2 75:18 <b>baseline</b> 68:10 <b>basically</b> 19:19 23:20 24:3 31:16 39:22 64:13 <b>basics</b> 19:13 <b>basis</b> 14:20 45:10 <b>batch</b> 33:11 <b>beach</b> 9:11 <b>beginning</b> 9:6 <b>behalf</b> 3:3,13 5:16	<b>belief</b> 63:23 <b>believe</b> 18:6 26:22 28:21 38:17 41:13 41:16 45:8 47:21 48:4 49:18 51:17 52:15 65:21 66:6 <b>believed</b> 55:24 <b>benefit</b> 63:25 <b>benefits</b> 10:25 <b>best</b> 20:5 22:14 26:19 28:9,15 37:1 41:13 44:18 50:8,11,12 59:6 62:7,11 64:2,22 66:8 73:20 <b>better</b> 13:4 26:3 30:6 33:2 45:25 46:1 64:5,15 66:13 <b>biased</b> 65:22 <b>biassed</b> 66:8 <b>billing</b> 44:3 <b>bit</b> 18:3 28:4 37:25 47:11 58:24 60:13 <b>blind</b> 19:21 <b>block</b> 67:14 <b>blog</b> 17:3,4,5 18:9 18:18,19 19:5 <b>board</b> 51:8 52:14 57:11,14,24 61:8 <b>bonds</b> 12:18,19 <b>book</b> 34:24,25 <b>booked</b> 17:15 <b>books</b> 20:15 25:4,7 31:18 <b>boss</b> 42:5 <b>bottom</b> 41:11 55:11 59:18 <b>box</b> 48:17,23,23 <b>brain</b> 28:19
---	---	--	--



[branch - cm3]

Page 3

<b>branch</b> 10:6 24:19 36:21,22 37:23 54:17 57:19 59:15 <b>branches</b> 36:21 <b>breaches</b> 48:4 <b>break</b> 7:17,19,23 18:2 23:3,5 27:24 48:10,13 72:19 <b>bridge</b> 72:7 <b>brief</b> 10:20 14:14 17:9 18:16,19 21:1 42:4,12 48:9 58:1 <b>briefly</b> 10:12 11:22 <b>bring</b> 51:8 <b>broke</b> 31:1 <b>broken</b> 24:15,19 <b>broker</b> 1:7 <b>brokerage</b> 10:20 <b>brought</b> 34:23 64:6 <b>bucket</b> 24:21 34:20 <b>buckets</b> 24:12,15 34:21,25 44:14 <b>buddy</b> 26:2 <b>build</b> 12:18 23:21 31:8 43:11 46:2 63:23 <b>building</b> 12:25 20:16 23:24 41:21 41:21 42:7,13 43:6 57:19 <b>built</b> 17:19 43:2,12 46:3 47:9 <b>bullets</b> 21:11 <b>bunce</b> 17:7 18:4 19:1 20:6 27:4 <b>bunch</b> 33:8 50:10	<b>business</b> 10:24 11:24 12:6 46:22 46:23,24 47:3 51:3,4 54:7,8 59:9 59:11 <b>businesses</b> 58:19 <b>butted</b> 60:12  <b>c</b> <b>c</b> 1:17 3:4 46:8,9 70:21 75:25 <b>california</b> 9:11 <b>call</b> 6:21 10:21 14:12,13 17:7,9,11 17:11,24 18:3 19:1,3,11,20 20:1 20:2,3,4,8,19 21:1 21:2,6,9 22:5,17 24:8,15 27:4 32:13,20 36:14 37:25 38:5 39:24 <b>called</b> 15:10 17:4 29:12 45:5 <b>calling</b> 31:10 <b>calls</b> 41:16,17,17 <b>cap</b> 1:6 <b>capacity</b> 6:18 7:3 9:19 70:17 71:5 <b>caption</b> 75:5 <b>card</b> 44:3,4,5 <b>cards</b> 44:2 <b>care</b> 10:16 73:21 <b>career</b> 10:18 <b>caremark</b> 10:25 <b>cares</b> 13:1 <b>carey</b> 12:5 <b>cascade</b> 44:1 <b>cascaded</b> 34:21 <b>case</b> 1:6 5:7 6:11 8:4 14:21,23 15:18,21 48:2 49:3	<b>cash</b> 24:16 36:14 <b>catalyst</b> 51:9 <b>category</b> 41:3 <b>caused</b> 38:17 <b>causing</b> 32:19 <b>cautioned</b> 50:20 <b>ccr</b> 1:17 75:25 <b>center</b> 32:13 36:14 <b>cents</b> 66:5 <b>ceo</b> 42:5 <b>certain</b> 16:12 49:4 <b>certainly</b> 20:20 62:25 <b>certificate</b> 75:1 <b>certify</b> 75:4,10 77:3 <b>cfo</b> 11:7,8 18:15 18:20,23,24 21:5 30:22,23 31:12,13 37:6 42:25 51:7 60:4 70:20 <b>change</b> 29:4 38:3 58:24 77:17,19,20 77:22,23,25 78:1,3 78:4,6,7,9,10,12 78:13,15 <b>changed</b> 56:12 <b>changes</b> 9:24 68:23 76:8 77:5,6 77:9 <b>characterization</b> 51:11 64:22 <b>characterize</b> 32:8 43:1 <b>characterized</b> 43:16 <b>characters</b> 18:18 42:9 <b>chart</b> 31:1 <b>chase</b> 3:15 11:3 46:4 73:19	<b>chase.ogletree</b> 3:21 <b>checked</b> 26:25 <b>chief</b> 11:21 25:5 31:16 <b>choice</b> 38:3 <b>chrismann</b> 17:4 <b>christy</b> 17:7,18 18:3,6 20:6 23:2,8 27:4 <b>circumstances</b> 69:3 <b>city</b> 63:21 <b>civic</b> 13:20 <b>civil</b> 77:9 <b>class</b> 12:20,21,21 <b>classes</b> 12:16,17 12:18,23,23 <b>clean</b> 31:18 <b>clear</b> 7:14 8:3 20:14 25:3 31:3 53:22 54:13 58:18 60:16 69:25 <b>clearly</b> 71:7 <b>clerks</b> 33:8 <b>client</b> 71:14,17 <b>close</b> 20:15 25:4,7 25:8,9,11 60:2 67:16,17 <b>closed</b> 31:17 <b>cm</b> 39:24 41:15 <b>cm1</b> 39:24 40:1,6 40:24 42:2 51:11 51:13,13,17 55:12 58:13,14 <b>cm2</b> 39:24 40:24 41:19 42:2 <b>cm3</b> 39:24 40:1,5 40:25 41:2,6,19 42:2 51:11,13,18 55:14 58:13
---	---	---	---

<b>coast</b> 44:6,7 <b>code</b> 75:16 <b>coding</b> 12:22 32:16 33:13 <b>coffee</b> 14:7 <b>college</b> 10:16 12:1 12:11 <b>colloquies</b> 75:6 <b>come</b> 10:8 16:23 39:6 48:10 59:16 <b>comfortable</b> 8:17 48:3 60:14,25 69:24 72:12 73:5 <b>coming</b> 32:17 33:16 47:10 52:14 57:14 <b>comments</b> 65:23 66:1 <b>commission</b> 78:24 <b>commitment</b> 75:21 <b>committed</b> 25:10 <b>comp'd</b> 67:1 <b>companies</b> 13:6 64:14 70:22 <b>company</b> 10:20 20:21 26:6 38:17 58:9 60:1,6 62:19 64:14 67:4 70:21 70:22 <b>compare</b> 34:4 <b>compelled</b> 45:19 49:6 <b>compensated</b> 57:7 <b>compensation</b> 9:23,24,25 10:5 25:16 28:1 29:6,8 29:10,15 64:17 75:18 <b>compete</b> 6:15	<b>complete</b> 19:14 <b>completed</b> 73:15 76:21 <b>compliance</b> 75:15 <b>complicated</b> 51:2 <b>components</b> 34:22 34:23,23 55:13 66:22 <b>compression</b> 51:5 <b>computer</b> 16:4,8,9 16:10,18,20 33:13 62:2 63:4,8 <b>conceivably</b> 73:25 <b>concern</b> 46:17 <b>concerns</b> 5:17 46:19 47:21 <b>conclude</b> 49:3 <b>concluded</b> 74:9 <b>conclusion</b> 56:5 67:9 <b>conditions</b> 27:23 58:5 <b>confer</b> 73:20 <b>confidence</b> 31:7 <b>confident</b> 18:6 31:19 67:2 <b>confidential</b> 17:3 19:11 <b>confidentiality</b> 70:12 71:15 73:4 <b>confirm</b> 50:5 <b>confirming</b> 49:19 <b>confrontational</b> 64:2 <b>considered</b> 34:24 35:16 <b>consistency</b> 68:8 <b>consistent</b> 68:4,5,9 <b>consistently</b> 31:20 <b>constantly</b> 46:24	<b>contain</b> 40:9 <b>contemplating</b> 65:8 <b>contemplation</b> 65:14 <b>contents</b> 18:11 <b>continue</b> 73:3 <b>contra</b> 35:1,2,3 <b>contract</b> 27:20,22 75:17 <b>contradicted</b> 55:7 <b>conversation</b> 27:1 <b>conversations</b> 14:17 24:9 41:24 43:25 50:23 58:1 <b>conversion</b> 32:14 36:14 <b>conveyed</b> 53:5,19 56:14 <b>cookie</b> 23:11 <b>copies</b> 76:16 <b>copy</b> 47:23 48:1,6 48:15,19 62:16 <b>corporate</b> 35:7,10 35:11,12 38:6,7 39:24 40:4,24 44:3 45:2 <b>correct</b> 7:4,5 9:20 11:18 13:10 15:24 15:25 16:17 18:9 18:10,21,22 19:24 22:8 26:7 30:2,3 35:24,25 36:4,5 40:10,17,18,21,22 40:25 48:16 49:12 49:13 50:7 54:18 54:19,21,22 60:20 61:4,5,18,19 62:9 66:16,17 69:1,2 70:2,3 71:1 75:8	<b>corrections</b> 76:9 77:13 <b>correctness</b> 36:7 <b>cost</b> 45:9 <b>costing</b> 45:6,6 66:4 <b>costs</b> 31:10 37:24 38:1 <b>counsel</b> 3:1 4:1 5:14 48:20 50:24 64:25 65:4 70:13 70:23 <b>county</b> 22:13 75:3 <b>couple</b> 6:12 7:6 13:19 17:24 <b>court</b> 1:1 5:25 7:8 49:4 75:22 76:20 76:23 <b>covering</b> 69:14 <b>covers</b> 69:21 <b>covid</b> 4:2 <b>cpa</b> 64:1,20 <b>create</b> 24:17 44:14 45:24 59:5,12,15 <b>created</b> 10:7 33:25 45:13 <b>creates</b> 47:11 <b>creating</b> 58:25 59:4,20 <b>credit</b> 11:5 44:2,3 44:4,5 <b>critical</b> 46:6 <b>criticism</b> 44:21 <b>criticisms</b> 45:18 46:11 <b>cross</b> 25:5 65:10 72:7 <b>csb</b> 32:17 <b>culture</b> 25:23 26:6 <b>cumulative</b> 35:18 <b>cup</b> 14:7
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<b>curiosity</b> 15:15 <b>current</b> 11:19 19:8 56:19 <b>currently</b> 9:9 <b>curtailing</b> 36:15 <b>cutoff</b> 73:23 <b>cutter</b> 23:11 <b>cutting</b> 10:17 <b>cv</b> 1:6 <b>cvs</b> 10:25	<b>degrees</b> 34:13 36:13 67:22 <b>delays</b> 32:19 <b>delete</b> 63:7 <b>delicate</b> 44:25 45:1,16,17 46:13 <b>delivering</b> 68:9 <b>departed</b> 14:16 16:1 68:25 <b>departure</b> 15:5,23 16:10 69:4 <b>deponent</b> 76:2,7 76:10,12,20 <b>deponent's</b> 76:7 78:18 <b>deposition</b> 1:12 5:10,12,14,21 6:9 8:5 14:6 49:3,19 70:6,14 71:19,24 71:25 72:3 73:8 74:9 76:6 77:11 <b>depositions</b> 6:17 7:2,3 <b>derive</b> 45:10 <b>describe</b> 12:13 26:3 <b>described</b> 20:24 <b>description</b> 2:2 21:10 <b>desire</b> 77:10 <b>detailed</b> 60:11,23 <b>details</b> 39:8 41:18 61:3 <b>diagnosed</b> 9:3 <b>dialogue</b> 46:16 <b>difference</b> 61:12 <b>different</b> 23:23 32:8,9,20,21 33:24 37:1 38:15 40:24 42:14 46:4 54:15 58:16 66:10	<b>differential</b> 12:25 43:13 61:14 <b>differentials</b> 44:13 <b>differentiation</b> 58:22 <b>dig</b> 48:22 <b>digest</b> 42:11 <b>dipped</b> 57:4 <b>direct</b> 75:17 <b>directed</b> 30:25 <b>direction</b> 20:19 64:16 75:7 <b>disbelief</b> 66:2 <b>discipline</b> 46:5 <b>disclose</b> 50:25 <b>disclosed</b> 57:25 <b>disconnect</b> 41:24 <b>discovery</b> 73:23 <b>discrepancies</b> 34:8 <b>discuss</b> 10:5 <b>discussed</b> 23:7 25:14,21 29:13 51:13 52:18 <b>discussing</b> 9:24 73:5 <b>discussion</b> 24:23 26:8,13 40:23 58:8 <b>discussions</b> 14:25 15:4,13 31:11 38:23 39:1,25 40:19 42:1 47:13 47:17 50:14 51:6 51:20 52:4 53:4 65:3,12 <b>disproportionality</b> 45:13 <b>disqualify</b> 75:14 <b>distinction</b> 31:24 68:23	<b>district</b> 1:1,1 <b>division</b> 1:2 54:6 55:10,17 <b>document</b> 29:23 49:7,11 50:6 63:3 63:7,13 65:7,9 71:21 <b>documents</b> 14:9 14:10,11 15:24 16:4,8,15 28:23 29:1,14 50:10 54:4,23,24 55:1,5 55:6,7,15 56:6 57:13,23 59:22 63:12 <b>dogs</b> 15:2 <b>doing</b> 30:19 32:9 36:25 41:22 65:25 67:14 74:2 <b>dollar</b> 59:8,9,10 59:13,13 66:4 67:4 <b>dollars</b> 59:11 <b>dovetail</b> 43:24 <b>drafted</b> 70:25 <b>drive</b> 16:12,14,15 <b>drives</b> 16:13 <b>drug</b> 70:24 <b>due</b> 4:2 49:5 76:3 <b>duly</b> 5:2 <b>duties</b> 21:7,11 59:2
<b>d</b> 1:8 5:1 46:9 76:2 <b>daily</b> 25:13 <b>data</b> 31:6,7 32:17 33:8,19,21 34:4,7 35:19 38:10 59:23 60:12,23 67:25 <b>database</b> 12:23 <b>date</b> 76:3 <b>daughter</b> 13:2 <b>david</b> 9:8 <b>day</b> 14:16 16:6,6 17:6,12,17 25:9,11 28:5,6,21 30:19 45:23 75:23 78:19 <b>days</b> 17:16,24 22:6 33:14 76:3 <b>dba</b> 12:22 <b>deal</b> 13:5 57:19 64:4,5,5 72:6 <b>deals</b> 25:18 <b>decent</b> 45:25 <b>decided</b> 71:18 <b>decision</b> 71:17 <b>defendant</b> 1:9 3:13 <b>defer</b> 60:7,8 <b>define</b> 27:21 <b>degree</b> 11:24 15:8 36:17	<b>d</b>	<b>e</b>	<b>e</b> 33:20 77:8,9 <b>earlier</b> 26:14 28:24 46:13 66:14 <b>early</b> 22:15 57:1 <b>easier</b> 49:9 <b>east</b> 44:6 <b>edge</b> 69:22

<b>education</b> 46:3 <b>educational</b> 11:23 <b>effect</b> 62:3 <b>effectively</b> 12:24 24:5 39:25 47:9 59:17 <b>efficiency</b> 31:23 <b>eight</b> 25:11 <b>either</b> 6:14 53:3 64:24 65:3 69:16 <b>electronically</b> 76:10 <b>email</b> 19:18 29:25 30:2,9,15 62:20,22 <b>emailed</b> 62:18 <b>emailing</b> 63:1 <b>emails</b> 30:5,7,13 30:14 <b>emphasis</b> 11:25 <b>employed</b> 11:11 11:13 16:24 27:19 28:3 47:5 <b>employee</b> 6:18 7:4 14:19,22 70:19 75:11 <b>employees</b> 27:23 <b>employer</b> 19:8,23 <b>employers</b> 10:11 10:12 18:21 <b>employment</b> 6:14 10:13 14:11 16:7 27:20,22 28:25 29:4 <b>encompassing</b> 41:3 <b>encouraged</b> 51:8 <b>ended</b> 58:17 <b>energy</b> 31:22 <b>engineer</b> 13:3 <b>engineering</b> 12:5,8 12:14,24	<b>entails</b> 12:15 <b>enter</b> 33:22 <b>entered</b> 77:11 <b>entire</b> 34:19 <b>entity</b> 7:4 <b>entries</b> 25:4 <b>entry</b> 33:9 <b>equal</b> 34:6 44:5 59:17 61:25 64:5 <b>equation</b> 59:17 <b>equations</b> 12:25 <b>equity</b> 11:5 <b>errata</b> 76:3,9,10 76:11,14,17,18,21 77:1 <b>errors</b> 33:14 35:18 37:10 57:12,22 <b>esq</b> 3:4,5,14,15,24 76:1 <b>ethics</b> 75:16 <b>event</b> 72:1 <b>everybody</b> 6:5 20:14 59:12,14 <b>evidence</b> 75:9 <b>evolved</b> 24:8 <b>ex</b> 14:19 <b>exact</b> 23:15 42:6 64:8 68:17 <b>exactly</b> 18:5 23:21 24:7 26:21 51:19 53:22 61:22 62:4 <b>examination</b> 5:4 <b>examinations</b> 2:7 <b>examined</b> 5:2 <b>example</b> 36:19 44:2 59:7 <b>examples</b> 43:25 44:9 <b>excel</b> 12:21 55:11 <b>exception</b> 47:25	<b>excited</b> 27:5 <b>exclusively</b> 12:16 <b>executive</b> 70:22 <b>executives</b> 70:23 <b>exhibit</b> 2:2 <b>exhibits</b> 2:1,3 <b>expectations</b> 31:4 <b>expense</b> 24:11 44:4 66:23 <b>expenses</b> 34:18,19 34:20 37:22 38:15 40:9 41:3 42:17 44:1,1,7 <b>experience</b> 43:11 <b>experts</b> 64:7 <b>expires</b> 78:24 <b>explanations</b> 66:7 <b>exported</b> 55:11 <b>express</b> 46:11 <b>expressing</b> 68:17 <b>extent</b> 8:10 40:6 61:2 <b>external</b> 31:19 35:15,19 <b>externally</b> 35:23 <b>extract</b> 59:16 <b>extracted</b> 59:23 61:24 <b>extracting</b> 31:6 <b>extraction</b> 32:17 <b>extrapolating</b> 33:19	<b>fair</b> 6:22 7:15,23 8:8,13 26:23 41:3 49:25 50:3 64:4 <b>fairly</b> 13:9 <b>faith</b> 73:11 <b>familiar</b> 22:19 <b>family</b> 9:14 15:2 <b>far</b> 10:14 13:6 24:13 30:13 36:6 38:14 <b>fast</b> 10:15 <b>february</b> 52:13 75:23 <b>federal</b> 77:8 <b>feel</b> 23:22 31:21 37:14 41:22 45:20 64:6 66:9 69:11 69:21 72:25 73:5 <b>felt</b> 17:23 31:19 32:22 37:16 42:20 66:12 67:2,5,20,21 68:7,18 69:10 <b>figuring</b> 17:21 <b>file</b> 32:18,18 76:15 <b>filed</b> 5:7 14:3 15:18 76:19 <b>files</b> 33:10 <b>fill</b> 76:10,11 <b>final</b> 16:6 40:5 <b>finance</b> 11:25 12:16 31:24 <b>financial</b> 6:13 11:7 11:21 12:5,8,14,17 12:19 13:9 18:25 24:14,24 26:9,13 35:6,7,9,10,12,13 35:16,22 53:6 54:4 55:6,10 57:13,23 59:22 60:5
		<b>f</b>	
		<b>f</b> 46:10 <b>facility</b> 76:22 <b>facing</b> 35:12,19 36:3,3 <b>fact</b> 25:16 54:1,4 55:7,25 57:12 58:10 68:1	

<b>financially</b> 75:12 <b>financials</b> 25:8 31:18,20 39:3 <b>find</b> 8:3 34:12,12 34:15 36:24 37:10 50:12 56:17 <b>finding</b> 34:13 <b>fine</b> 8:18,19,20 21:21 72:4 73:10 <b>finish</b> 22:2 72:5,8 <b>finley</b> 3:6 <b>firm</b> 3:6 <b>first</b> 5:2 15:10 18:3 19:1 23:7 26:12 28:5,6 30:18 31:14 49:10 <b>fit</b> 17:22,24 25:24 <b>five</b> 11:3,6 14:14 14:16 18:25 29:9 32:8,20,21 42:11 43:3,5 48:10 <b>flag</b> 15:16 <b>flew</b> 17:16 22:12 22:15 64:10,11 <b>flight</b> 17:15 <b>flown</b> 22:6,9 <b>fly</b> 63:21 <b>focal</b> 20:23 <b>focus</b> 20:16 31:22 40:1 57:9 <b>focusing</b> 32:3 <b>following</b> 77:6 <b>follows</b> 5:3 <b>foregoing</b> 75:4 <b>form</b> 25:1 26:16 29:16 32:6 34:10 36:8 37:12 38:19 39:4,12 40:11 46:14 50:17 51:24 52:20 53:8 55:2 55:19 56:1,12	57:15 58:11 60:21 62:10 63:19 65:20 66:20 67:11 77:10 77:14 <b>formal</b> 17:11 <b>former</b> 70:20,21 70:23 <b>forth</b> 28:25 64:19 <b>forward</b> 59:14 76:15 <b>found</b> 34:17 35:5 <b>foundation</b> 34:11 36:9 38:20 39:5 39:13 40:12 50:18 51:25 52:8,21 53:9 56:2 57:16 58:12 63:20 66:21 <b>four</b> 11:1,3,6 17:14 21:22 26:20 29:9 41:14 62:4 63:13 66:25 <b>friction</b> 47:8 <b>friday</b> 22:18 <b>friends</b> 14:19 15:8 <b>friendship</b> 14:20 15:2 <b>frommert</b> 1:14 5:1 5:6,21 6:8 9:8,9 38:23 47:22 48:14 49:21 50:5,19 52:1,9 60:22 70:13 71:8,23 72:11 74:5 76:2 <b>front</b> 38:10 63:24 64:18 <b>frustrated</b> 66:12 <b>full</b> 9:7 <b>fully</b> 8:25 <b>fulton</b> 75:3 <b>functional</b> 25:13	<b>funding</b> 1:8 5:8 6:19,21 10:5 11:8 11:9 <b>funds</b> 38:18,25 50:15 51:10,16,22 52:5,18,25 <b>furnish</b> 77:15 <b>further</b> 5:13 75:10 <b>future</b> 41:22 43:14 <b>g</b> <b>ga</b> 3:9,18 76:24 <b>gap</b> 32:2 <b>gaps</b> 60:2 <b>garage</b> 48:18 <b>gate</b> 47:12 <b>gears</b> 58:24 <b>general</b> 22:13 <b>generally</b> 62:20 70:14 <b>georgia</b> 1:1 9:12 9:15,17,21 10:4,9 75:2 <b>getting</b> 11:2 12:4 16:2 37:19 66:15 <b>gibson</b> 3:5 6:4 49:14 <b>gina</b> 1:4 3:25 5:7 10:2,3 59:8 <b>girls</b> 68:12,14 <b>gist</b> 64:18 <b>give</b> 7:9 11:6 13:14 19:12 21:4,8 27:25 28:10 36:18 42:11 47:21 49:21 59:6 61:3 64:23 66:9 68:2 70:10 71:16 72:13,17 <b>given</b> 16:23 60:12 60:17 66:6 69:18 72:3 75:9 77:12	<b>gives</b> 38:12 59:17 <b>giving</b> 7:12 21:3 46:8 66:3 <b>go</b> 5:13 7:6,21 10:14,15 16:3 19:25 25:25 26:18 28:11,14,19 30:6 30:11 36:16 41:8 41:17 42:10,23 43:10 45:3 52:21 53:3 54:24 59:4 59:21 61:6 69:23 73:8 <b>goal</b> 41:20 56:23 <b>goals</b> 17:20 42:7 <b>goes</b> 39:22 51:10 <b>going</b> 7:8,18 8:12 12:1 15:9,11,15 17:23 18:2 25:24 26:2 28:9 31:2,7 35:15 42:23 43:14 45:8,10 46:3,6 49:1,2,23 57:7 58:2 59:13 60:7,8 60:19 63:25 65:17 69:16 70:1,15 71:16,19 73:2,3 <b>golden</b> 3:16 <b>good</b> 6:5 13:5 17:23 18:13 23:17 30:25 43:2 45:4 60:1 67:21,22,25 68:7,13,14,21 72:22 73:11 <b>gotten</b> 29:25 <b>grade</b> 46:9 <b>graduate</b> 12:10 <b>grass</b> 10:17 <b>gray</b> 60:14,24 69:14
---	---	---	---



<b>great</b> 51:7 57:19 <b>greetings</b> 76:5 <b>gregory</b> 3:16 <b>ground</b> 7:7 8:15 8:20 <b>group</b> 17:18 54:7 <b>guess</b> 5:17 12:2 15:7 26:18 30:21 36:24 64:9 65:21 72:21 <b>guidance</b> 70:11 72:14 <b>guy</b> 46:23 <b>guys</b> 21:25 69:20	<b>heavy</b> 57:9 <b>held</b> 11:16 <b>help</b> 13:5 64:6 <b>henry</b> 3:14 5:15 48:6 76:1 <b>henry.perlowski</b> 3:20 <b>hey</b> 26:2 <b>hi</b> 17:5 19:5 <b>high</b> 10:17 <b>hire</b> 17:1 42:24 51:7 <b>hired</b> 31:13 <b>historical</b> 59:23 <b>history</b> 10:13 16:23 57:8,9 <b>hit</b> 34:20 36:22 <b>holistic</b> 38:12 <b>home</b> 11:4 25:17 <b>homework</b> 13:5 <b>honor</b> 72:25 73:2 <b>honors</b> 12:1 <b>hoping</b> 63:22 <b>hot</b> 27:13 <b>hour</b> 17:13 19:20 20:1,8 21:6,9 22:5 22:17,22 64:9 <b>hours</b> 23:15 <b>house</b> 17:25 27:14 27:15 <b>hover</b> 73:1 <b>hr</b> 29:25 <b>huh</b> 7:12	<b>impacts</b> 75:21 <b>impartial</b> 75:22 <b>impartiality</b> 75:15 <b>important</b> 7:9 58:22 68:1 <b>importantly</b> 67:25 <b>improper</b> 32:16 32:19 <b>improve</b> 32:22 33:17 46:22,24 <b>improvement</b> 31:4 32:12 37:4 <b>inaccuracies</b> 53:16 <b>inaccurate</b> 32:15 <b>include</b> 56:25 <b>included</b> 27:25 41:6 <b>inclusions</b> 38:8 <b>income</b> 59:16 68:5 68:7 <b>incorrect</b> 37:14,16 <b>incorrectness</b> 53:2 <b>increase</b> 29:6,8,10 29:11,15 <b>independent</b> 15:20 <b>index</b> 2:1,7 <b>indicated</b> 54:25 56:8 <b>individual</b> 24:20 <b>indulging</b> 48:13 <b>industry</b> 18:9 51:4 67:13 <b>influence</b> 8:23 <b>information</b> 21:3 21:4,8 26:5,6 60:5 60:18 66:9,16,18 69:10 <b>informed</b> 45:15 <b>initial</b> 19:1 20:1 21:2	<b>inside</b> 59:8 61:24 <b>interest</b> 17:6,10 20:17,20 23:17 75:13 <b>interested</b> 19:6 75:12 <b>interesting</b> 25:22 <b>interference</b> 70:18 <b>internal</b> 31:22 32:4 35:14,17,18 36:1,6 37:5,9,11 37:18 38:16 40:8 40:16 41:6,8 42:3 42:16 44:16,23 45:18 53:6 54:11 55:6 56:7 57:13 57:23 64:24 65:4 <b>internally</b> 73:20 <b>internet</b> 15:20 <b>interview</b> 21:13 22:7 23:10,11,14 <b>intranet</b> 37:8 41:9 <b>investment</b> 10:20 12:3 <b>involved</b> 14:20,23 24:24 58:25 61:16 <b>inward</b> 36:3 <b>iphone</b> 30:11 <b>irrespective</b> 49:21 <b>ish</b> 10:23 11:1 17:14 31:9 <b>island</b> 25:25 <b>issue</b> 9:4 49:22,24 50:24 66:15 72:4 <b>issued</b> 16:4 34:9 <b>issues</b> 34:8 35:5 36:6 70:9
<b>h</b>	<b>idea</b> 55:23 71:2 <b>illegal</b> 8:24 <b>imbalanced</b> 37:25 <b>immediately</b> 10:19 64:2 <b>impact</b> 43:14 73:25	<b>j</b>	<b>january</b> 1:15 <b>jason</b> 17:7 18:7 20:6 23:3 39:14

39:17 44:19 45:23 47:1 54:2,3 58:1 58:15,16 60:11 <b>jim</b> 14:24,25 25:5 25:6 31:17 <b>job</b> 11:16 16:25 19:6 21:10,14,15 23:19 26:5 27:2,7 27:9,10,11 45:4,25 <b>john</b> 22:12 <b>join</b> 18:15 <b>joined</b> 31:15 56:24 <b>joining</b> 52:16 <b>jon</b> 15:7,13 64:10 65:2,16 <b>journal</b> 25:4 <b>jp</b> 46:4	51:15 53:14,18,22 56:4,11 58:2,6 62:13 63:10,21 66:2,11 67:15,24 69:20 72:23 74:5 <b>knowing</b> 70:15 74:1 <b>knowledge</b> 6:14 30:10 40:7 44:18 52:12 <b>known</b> 17:4 41:9 <b>kristin</b> 39:14,19 44:19 <b>kristin's</b> 44:23	<b>legal</b> 8:24 50:24 64:25 <b>lender</b> 10:22 11:15 18:15 <b>length</b> 64:8 <b>level</b> 24:22 38:2,2 38:2,6,6,7,7 40:5 43:9 44:3 46:4 70:21 <b>levels</b> 39:23 40:4 <b>leverage</b> 24:17 <b>leveraging</b> 36:15 <b>licenses</b> 12:3 <b>limits</b> 18:18 <b>line</b> 18:7 41:11 55:12 59:18 77:17 77:20,23 78:1,4,7 78:10,13 <b>linear</b> 12:25 <b>lines</b> 6:13 11:5 <b>link</b> 13:2 <b>linkedin</b> 28:14,17 28:18 <b>listed</b> 21:16 <b>listened</b> 46:25 <b>literally</b> 28:13 33:15 34:4 48:17 48:22 <b>litigation</b> 6:14 65:8,14 73:17 <b>little</b> 16:2 18:2 28:4 37:25 43:25 44:13 47:11 58:21 58:24 60:13 <b>live</b> 9:10 <b>lived</b> 9:12 22:11 <b>lively</b> 63:18 <b>llp</b> 3:16 <b>loan</b> 37:23,23 <b>loans</b> 33:9 36:20 66:24	<b>logically</b> 74:2 <b>long</b> 7:18 14:13 17:8 18:23 20:1,8 21:6,9 22:5 27:10 64:9 66:1 68:9 <b>longer</b> 13:18 <b>look</b> 12:9 14:9 20:18 23:19 28:11 28:14 34:4 35:3 36:18 38:1,3 41:10,11,23 43:2,5 43:5,15 45:5 50:6 50:9 54:10,11 58:20,23 59:21 60:9 64:13 <b>looked</b> 42:8 43:25 46:2 51:13 <b>looking</b> 18:14 19:24 20:9 21:5 33:6 34:7 38:5 43:16 56:24 57:5 58:14,15 <b>looks</b> 42:13 43:12 <b>lose</b> 64:14 <b>loss</b> 58:20,25 59:21,25 65:19 <b>lost</b> 54:7 57:4 <b>lot</b> 10:24 20:19,21 32:24 51:5 64:19 68:13 <b>love</b> 67:23 <b>ls</b> 10:6,7 <b>lucy</b> 1:17 75:25
<b>k</b>	<b>l</b>		<b>m</b>
<b>keblar</b> 41:9 55:9 56:20 <b>keeper</b> 50:11 <b>keeping</b> 66:22 <b>kelly</b> 10:3,3 61:13 <b>keying</b> 33:10 <b>kilter</b> 16:2 <b>kind</b> 6:11 16:24 17:20 18:2 19:21 26:1 <b>knew</b> 30:23 <b>know</b> 5:16 6:12,22 7:20 8:4,4,7 10:14 13:16 14:14 17:5 17:23 19:11,12,23 21:23,23 22:20,24 23:5,14 26:1,3 27:21,24 28:2,21 30:21,23 32:10 34:24 36:11 37:20 39:8 42:9 43:3 44:4 45:2,9,19 46:22 47:18 48:23	<b>lack</b> 8:11 <b>ladder</b> 43:3 <b>lady</b> 40:20 <b>lags</b> 32:19 <b>laguna</b> 9:11,11 <b>laptop</b> 63:3,8 <b>large</b> 13:9,18 18:15 <b>late</b> 28:10 <b>law</b> 12:20 72:24 <b>lawyer</b> 5:19,24 69:20 <b>layer</b> 38:1 <b>layers</b> 41:12 <b>layperson</b> 12:13 <b>leadership</b> 52:13 52:16 53:5 <b>leakage</b> 23:23 <b>learn</b> 12:18,19 39:10 <b>learned</b> 16:25 <b>leave</b> 17:22 69:19 <b>left</b> 10:21,25 11:5 15:10,10 16:9		<b>m</b> 3:14 76:1 <b>mail</b> 76:12 <b>maintaining</b> 75:14 <b>majority</b> 20:10 31:1 <b>making</b> 31:3 33:8 53:13,16,20 58:3,4

58:9,10 69:22 77:12,13 <b>management</b> 24:16 25:12 <b>managers</b> 10:4 59:1 61:11 <b>mandatory</b> 45:21 <b>mansell</b> 76:23 <b>manually</b> 76:11 <b>marching</b> 64:15 <b>margin</b> 40:4 <b>margins</b> 39:24 40:24 51:5 <b>mark</b> 28:19 <b>marked</b> 2:3 <b>market</b> 27:13 53:12 57:4 58:5,5 58:18,19 64:13 <b>marybeth</b> 3:5 <b>master's</b> 11:2 12:4 12:7 <b>masters</b> 12:14 <b>material</b> 70:19 <b>materials</b> 61:20 <b>math</b> 20:16,24 59:16 72:22,22 <b>mathematically</b> 44:9,12 64:21 67:6 <b>mathematics</b> 12:17,23 32:15 <b>matter</b> 75:14 <b>matters</b> 70:24 <b>mean</b> 5:15 20:10 28:13 46:9 60:2 62:4,22,23,25 65:15,21 <b>meaning</b> 25:24 <b>medication</b> 8:24 <b>meet</b> 63:22	<b>meeting</b> 10:1,2,8 14:12 22:15,17,22 23:1,3,7 25:15,19 25:21,22 26:12,14 26:24 33:4 42:10 52:13,16,19,25 53:1,5,11,18 58:3 58:4,8 61:16,21,21 63:15 64:18,25 65:5,13,15 <b>meetings</b> 10:1 32:21 <b>member</b> 13:20,23 <b>members</b> 9:14 <b>memory</b> 9:4 18:14 28:10 <b>mention</b> 50:21 <b>mentioned</b> 39:15 54:2 <b>methodologies</b> 45:6 <b>methodology</b> 37:14,17 61:10 <b>metrics</b> 23:24 32:14 <b>mgibson</b> 3:11 <b>mid</b> 57:1 <b>middle</b> 28:10,22 <b>military</b> 14:1 <b>million</b> 67:4,5 <b>mind</b> 65:10 <b>minute</b> 19:3 42:9 42:11 48:10 72:17 <b>minutes</b> 14:14,16 17:9 <b>misallocated</b> 38:18 <b>misallocation</b> 38:24 39:2 50:15 51:10,16,22 52:5 52:18,25 53:15	<b>mischaracterizes</b> 36:9 40:12 60:22 <b>missed</b> 35:2 <b>mistakes</b> 57:22 <b>model</b> 47:9 55:13 57:20 58:25 59:4 59:8,15,20,21,25 61:6,7,15 65:19 66:19 68:8,8 <b>modeling</b> 12:21 23:20 24:20 31:23 <b>models</b> 20:16,16 20:25 41:17 <b>moment</b> 66:12 <b>money</b> 24:1 53:13 53:16,20 54:1,4,7 54:10 55:25 57:5 58:3,4,9,10 61:23 61:24 64:14 68:12 68:14,15,19,20,21 68:23 <b>monkey</b> 73:14 <b>month</b> 25:8 28:8 <b>months</b> 27:15 29:9 39:9 56:25 <b>morgan</b> 46:4 <b>morning</b> 22:15 64:12 <b>mortgage</b> 10:22 11:4,4,14,14 17:4 18:9,15 45:25 51:3 53:12 <b>motions</b> 73:24 <b>move</b> 27:11 <b>moved</b> 18:1 <b>movement</b> 58:18 58:19 <b>moving</b> 22:21 <b>multiple</b> 12:22 20:2 24:8 33:14 40:4	<b>muth</b> 14:24,25 15:5 <b>n</b> <b>naf</b> 6:21 9:19,21 14:17,18 15:5,24 16:4,10,14,18,24 20:9,25 24:25 27:1,8,19 28:5 30:1,8,9,14,15,18 31:12 35:6 38:24 39:2,3 42:2 43:19 44:22 47:5 49:23 50:14 51:21 52:4 52:14 53:4,19,25 54:4 55:24,25 56:8 57:21 59:1 59:25 60:5,10 62:24 64:24 65:4 65:13 68:11,16,25 70:9,12,25 71:10 73:12,19 <b>naf's</b> 22:7 26:9,13 50:24 59:22 <b>name</b> 9:7 19:7,10 <b>narrow</b> 69:12 <b>national</b> 11:14 18:15 <b>nationally</b> 11:1 <b>nature</b> 6:16 12:4 12:24 24:2 35:4 <b>nda</b> 47:19,22,24 47:25 48:1,5,7,15 49:5,15 60:7,8,20 61:3 69:7,14,21 70:2,10,25 71:5,11 71:16,20,24 72:6 72:13 73:2,12 <b>ne</b> 3:7 <b>necessarily</b> 23:25 <b>necessary</b> 77:15
--	---	--	---



[need - perlowski]

Page 11

<b>need</b> 7:11,17,19 24:7 45:17 54:12 <b>needed</b> 31:21 32:15 59:24 66:19 69:10 <b>nerdy</b> 13:1 72:23 <b>never</b> 34:2 56:6 59:10 <b>new</b> 1:8 5:8 6:18 6:21 10:4 11:7,9 42:24,24 58:5,5 64:17 65:19 <b>night</b> 22:16,16 32:1 64:11 <b>niguel</b> 9:11 <b>nine</b> 34:22 66:25 67:1 <b>nod</b> 7:12 <b>non</b> 6:15,15 <b>normal</b> 20:13 67:13 <b>north</b> 10:23 <b>northern</b> 1:1 <b>notarized</b> 76:12 <b>notary</b> 78:23 <b>noted</b> 77:5,6 <b>notice</b> 34:8 48:21 <b>notified</b> 29:11 <b>noting</b> 76:8 <b>number</b> 24:17,18 41:15 59:19 <b>numbers</b> 56:19 65:18 67:13 <b>nw</b> 3:17	66:15 67:10 69:9 <b>object</b> 5:16 25:1 26:16 29:16 32:6 34:10 36:8 37:12 38:19 39:4,12 40:11 46:14 50:17 51:24 52:20 53:8 55:2,19 56:1 57:15 58:11 60:21 62:10 63:19 65:20 66:20 67:11 <b>objection</b> 52:7 <b>obligation</b> 71:15 75:15 <b>obviously</b> 73:24 <b>occurred</b> 50:16 <b>ocga</b> 77:9 <b>offer</b> 17:25 27:2,4 <b>office</b> 22:10 23:1,8 25:15 26:15 29:12 33:15 42:24 <b>officer</b> 11:21 25:5 31:17 37:23 75:22 <b>offices</b> 22:7 76:3 76:13 <b>official</b> 19:17,20 21:13 <b>ogg.com</b> 3:20,21 <b>ogletree</b> 3:15 <b>okay</b> 6:4 14:22 19:16 43:6 47:7 48:25 49:25 73:16 <b>ola</b> 54:17,20 55:8 56:9,18 <b>omissions</b> 57:22 <b>once</b> 27:19 37:6 42:10 73:11 76:11 <b>oncu</b> 11:6 13:9,14 13:16 18:25 <b>ones</b> 56:9	<b>ongoing</b> 46:16 <b>online</b> 56:14 <b>opinion</b> 43:4 <b>opportunity</b> 32:11 <b>orange</b> 22:12 <b>order</b> 48:2 73:17 <b>ordering</b> 76:17 <b>organization</b> 25:6 <b>organizational</b> 13:22 <b>organizations</b> 13:21,24 <b>oriented</b> 25:13 <b>original</b> 76:16,19 <b>originally</b> 12:10 <b>originators</b> 13:19 <b>outcome</b> 75:12 <b>outset</b> 50:21 <b>outside</b> 54:6 64:24 65:4 <b>outward</b> 35:12 36:3 <b>owned</b> 25:16 <b>owner</b> 43:8 47:3 <b>owner's</b> 42:23	<b>part</b> 51:7 53:15 54:17 59:1 <b>particular</b> 36:12 <b>parties</b> 35:14 75:22 76:17 <b>party</b> 75:11,17 <b>path</b> 30:24 <b>patty</b> 17:18 20:6 23:2,8 <b>paved</b> 30:24 <b>payables</b> 33:9 <b>pc</b> 3:6 <b>pdf</b> 76:9 <b>peaked</b> 20:17 <b>pending</b> 73:24 <b>penny</b> 67:5 <b>people</b> 17:14 20:3 22:25 32:8 36:24 39:15 44:19,20 46:1,5 57:7 63:22 64:6 68:21 72:22 <b>percent</b> 23:15 31:2 31:5,9 33:5,18 44:6,6 50:9 59:19 59:19 67:20 68:3 <b>percentage</b> 31:9 59:18 <b>perception</b> 66:13 <b>perfect</b> 67:23 <b>perfection</b> 67:22 <b>performance</b> 24:14,18 <b>period</b> 10:21 71:9 <b>perlowski</b> 3:14 5:20 6:2,6 14:13 14:15 21:25 25:1 26:16 29:16 32:6 34:10 36:8 37:12 38:19 39:4,12 40:11 46:14 47:20 48:8 49:10,18
<b>o</b>		<b>p</b>	
<b>o'bradovich</b> 17:7 18:4 19:2 20:7 23:4 25:20 26:8 39:14,17 40:20 44:23 46:12,19 47:4,15 55:24		<b>p</b> 10:6,7 59:5 61:6 61:7,23,24 66:19 <b>p.m.</b> 1:16 48:11,11 72:20,20 74:9 <b>packed</b> 48:22 <b>page</b> 2:2,7 59:14 61:22 62:7 64:12 77:17,20,23 78:1,4 78:7,10,13 <b>pages</b> 28:1,25 77:14 <b>paid</b> 36:20 59:8,11 <b>pandemic</b> 4:3 <b>papers</b> 33:12	

50:1,17 51:24 52:7,20 53:8 55:2 55:19 56:1 57:15 58:11 60:21 62:10 63:19 65:20 66:20 67:11 70:5,7,20 71:2,7,13 72:2,10 72:18 73:10 74:5 74:7 76:1 <b>person</b> 14:17 22:7 36:12 63:15 65:15 <b>personal</b> 15:12 47:1 50:11 <b>personally</b> 6:24 69:15 70:4 <b>perspective</b> 35:19 68:7 <b>pertained</b> 15:14 <b>phoenix</b> 22:11 27:11 <b>phone</b> 14:12,13,18 17:7,9 <b>physically</b> 33:10 33:15 <b>pick</b> 45:11 <b>picked</b> 57:5 <b>picking</b> 45:9 <b>picture</b> 34:3 61:22 <b>pie</b> 31:1 34:1,2 54:11,12,14,15 <b>piece</b> 42:12 54:12 54:14,16 <b>pieces</b> 54:10 <b>piedmont</b> 3:7 <b>place</b> 23:25 26:25 29:8 47:19 49:20 52:13 73:4 <b>places</b> 16:16 <b>plaintiff</b> 1:5 3:3 48:20	<b>plan</b> 9:24 64:17 <b>plane</b> 17:17 <b>plans</b> 9:23,25 15:11 <b>plant</b> 15:16 <b>playing</b> 69:21 <b>pleadings</b> 15:17 <b>please</b> 8:6 22:2 55:3 76:12,21 77:14,15 <b>plugged</b> 62:2 <b>plus</b> 28:1 46:9 <b>point</b> 20:23 21:11 27:7 29:3,5 57:23 62:3,5,6,9,14 63:16 68:25 73:7 <b>points</b> 45:10 <b>policy</b> 27:24,24 <b>politics</b> 45:2 <b>poor</b> 46:7 <b>position</b> 11:19 21:7 49:24 60:10 71:3 <b>possible</b> 66:23 67:17 <b>possibly</b> 23:8 <b>posted</b> 17:3 <b>posting</b> 17:3 18:8 18:12 19:21,21 21:13 <b>power</b> 62:2,5,6,9 62:13 63:16 <b>practice</b> 37:1,2 <b>practices</b> 59:6 <b>precise</b> 34:14 44:14 <b>precision</b> 46:5 <b>preparation</b> 44:16 61:15 <b>prepare</b> 14:5 59:25 61:20	<b>prepared</b> 43:19 45:24 61:7,9 65:7 <b>presence</b> 13:7,9,17 13:19 <b>present</b> 3:23 15:6 22:23 <b>presentation</b> 64:12 <b>presented</b> 61:17 62:1 65:19 <b>presently</b> 11:9,11 <b>president</b> 42:5 <b>pretty</b> 14:14 17:4 18:6,16,19 42:12 59:5 67:21,22 <b>previously</b> 57:25 <b>price</b> 12:18 <b>pride</b> 46:23 <b>print</b> 76:11 <b>prior</b> 10:11,12 14:15 18:20 30:22 39:20 49:19 52:14 52:16 57:13 59:22 65:4 <b>probably</b> 6:12 13:1,13 17:18 21:19 28:14,16 31:5,14 43:24 45:25 46:1 48:17 48:21,22 53:23 60:1 62:21 64:22 66:10 <b>problem</b> 7:20 22:3 39:7,11 72:10 <b>problems</b> 32:4 35:23 36:1 39:21 42:16 <b>procedure</b> 77:9 <b>proceed</b> 73:21 <b>proceeding</b> 69:24 75:9,21	<b>process</b> 17:2 19:4 25:10,11,11,12 31:3 33:16,17 48:24 <b>processes</b> 33:6,7 <b>processor</b> 36:20 <b>product</b> 24:22 <b>production</b> 76:22 <b>professional</b> 10:18 13:23 75:16 <b>profit</b> 38:1,2,2 55:8,14,16 58:25 59:20,21,25 65:19 <b>profitability</b> 24:20 24:22 39:23 57:20 59:15 <b>profitable</b> 54:20 56:8,18,21 <b>profits</b> 59:9 <b>progress</b> 42:7 <b>project</b> 25:12 <b>promptly</b> 73:13 <b>proper</b> 34:3 <b>properly</b> 34:19 <b>protective</b> 48:2 73:17 <b>provide</b> 44:21 48:19 49:7,8 50:6 70:13,23 <b>provided</b> 56:20 60:4 67:9 69:9 <b>provider</b> 11:1 <b>public</b> 78:23 <b>published</b> 37:7 41:10 67:21 <b>publishes</b> 41:11 <b>pull</b> 33:23 34:1 <b>pulling</b> 28:17 <b>purported</b> 38:24 39:2,21
---	---	--	--

<p><b>purportedly</b> 50:15  <b>purpose</b> 9:22  70:14  <b>purposes</b> 5:21  <b>pursuant</b> 5:9 77:8  <b>push</b> 67:23  <b>pushed</b> 34:18  <b>put</b> 19:7 26:1 34:1  42:19 50:1 59:10  62:2,9 69:15  73:22  <b>putting</b> 63:24  64:17</p>	<p><b>read</b> 5:11,25 15:17  76:6 77:4  <b>real</b> 26:5  <b>really</b> 14:7 17:2,12  17:13 18:1,1  25:22,23 26:3  35:11 41:20 43:1  45:4,20 63:12  72:23  <b>reason</b> 7:19 72:8  77:19,22,25 78:3,6  78:9,12,15  <b>reasoning</b> 45:12  <b>reasons</b> 6:15 77:12  <b>rebuild</b> 47:10  <b>recall</b> 17:8 18:5  20:3 21:15,24  22:25 23:4 26:21  29:18,22 34:17  40:3 41:14,19  42:6 51:23 52:2  52:10,24 55:22  56:22 62:4 63:1,5  63:9,14 64:3,8,11  65:1,6 68:13,14  <b>receive</b> 30:14  <b>received</b> 30:5  <b>receiving</b> 30:13  <b>receptive</b> 46:18  <b>recess</b> 48:11 72:20  <b>recognize</b> 45:15  73:23  <b>recollection</b> 20:5  22:14 26:20 41:13  50:8 62:7,11  <b>record</b> 7:15 8:13  9:7 26:18 50:2,11  60:16 69:24,25  73:22 75:8  <b>records</b> 55:10</p>	<p><b>recruited</b> 16:25  <b>reduce</b> 33:14  <b>reduced</b> 75:7  <b>reducing</b> 31:10  <b>reduction</b> 24:11  <b>reed</b> 15:7,13 64:10  <b>referred</b> 28:24  52:5  <b>reflected</b> 8:12  <b>refreshed</b> 32:18  <b>regard</b> 39:2 73:21  <b>regarding</b> 49:24  50:24 70:11 71:11  <b>region</b> 56:16,17,22  59:6 61:12,13  <b>regional</b> 10:4,6,22  24:19 37:22 38:1  38:6,7 59:1 61:11  <b>regionals</b> 64:15  <b>regions</b> 61:11,13  <b>regularly</b> 16:11  <b>relate</b> 35:6  <b>related</b> 6:13 10:10  29:14 30:5,7,15  52:5  <b>relationship</b> 63:23  75:13  <b>relative</b> 75:10  <b>remaining</b> 31:8  <b>remember</b> 18:11  19:19 22:18 23:14  26:20 28:5,6,8  29:7  <b>remodeling</b> 32:15  <b>remote</b> 1:12 4:1  <b>remotely</b> 3:23  <b>remove</b> 16:19 59:9  <b>repeat</b> 40:14 55:3  <b>replied</b> 17:5  <b>report</b> 32:10 34:1  34:3 35:17 40:8</p>	<p>54:11 56:13  <b>reporter</b> 5:25 7:8  <b>reporting</b> 23:23  23:23 24:9,13,14  24:16,18,21 32:14  33:24 35:14 36:14  36:15  <b>reports</b> 31:8,23  32:5,9,9,21 33:24  34:9 35:18 36:2,6  37:5,10,11,18  38:17 39:7,11,21  40:16,21 41:2,6  42:3,16 43:19  44:17,24 45:18  53:6 56:7  <b>represent</b> 5:7 70:8  71:4,25 72:3  <b>representation</b>  5:18 71:8  <b>represented</b> 5:14  69:15 70:5  <b>representing</b> 5:20  70:5  <b>request</b> 49:11  71:21  <b>requested</b> 71:21  76:6  <b>requirement</b>  45:21  <b>rescind</b> 69:17  <b>research</b> 15:21  <b>reserve</b> 6:2 49:23  <b>reserved</b> 74:8  <b>reside</b> 9:14  <b>respect</b> 37:17  38:16 42:17 50:16  50:22 70:8 73:22  <b>respond</b> 19:5  <b>responding</b> 18:8</p>
<b>q</b>			
<p><b>question</b> 7:22 8:6  8:11 30:6 32:23  36:12 40:14 50:23  51:19,20 55:3  58:6 60:18,19  66:10 70:1 72:12  72:16  <b>questions</b> 7:10,25  8:1,3 23:11,18  31:15 49:1,4  64:19 66:5 73:1  74:4,6 75:6  <b>quick</b> 42:8 48:21  72:16  <b>quit</b> 65:17</p>			
<b>r</b>			
<p><b>range</b> 67:7  <b>rank</b> 23:23 24:21  46:8  <b>rapid</b> 17:2,13 18:1  58:18,19  <b>rate</b> 57:6  <b>rateau</b> 1:17 75:25  <b>raw</b> 34:4  <b>reach</b> 67:8</p>			

[response - sorry]

Page 14

<b>response</b> 7:11 60:18 <b>responses</b> 7:10 <b>responsibilities</b> 21:14,16 <b>responsibility</b> 76:7 <b>responsible</b> 44:16 <b>restriction</b> 70:12 <b>restructuring</b> 24:1 <b>result</b> 47:3 <b>results</b> 32:19 38:4 41:10 54:15 68:9 <b>resumé</b> 19:13,17 19:23 21:12 <b>retail</b> 10:23 11:4,4 <b>retain</b> 14:11 <b>returned</b> 16:6 76:14,18 <b>reveal</b> 47:20 <b>revenue</b> 34:21,25 35:1,1,2,3 54:9 60:11,23 66:23,23 <b>review</b> 10:5 25:8 37:5 54:3,23,25 55:5,6 56:7 76:8 <b>reviewed</b> 37:9 40:17 55:15 <b>reviewing</b> 41:20 <b>reviews</b> 56:17 <b>rick</b> 17:18 20:6 23:1,2 29:12 42:4 46:16 54:2,3 58:1 58:14,15 <b>rick's</b> 23:8 <b>right</b> 5:11,12 6:1,3 8:10 14:9 19:9 28:17 29:7 33:9 34:13 35:14 47:3 51:6 54:16 60:10 64:7 66:8 74:3	<b>rip</b> 42:25 <b>risk</b> 69:16 <b>road</b> 3:7 <b>role</b> 6:13 11:20 17:21 42:5 <b>roles</b> 17:22 <b>rolling</b> 9:23 <b>room</b> 23:4 37:4 64:1 <b>roswell</b> 76:24 <b>roughly</b> 25:9 <b>routinely</b> 58:23 70:22 <b>rpr</b> 1:17 75:25 <b>rude</b> 7:13 <b>rule</b> 77:8 <b>rules</b> 7:7 8:15,20 77:8 <b>run</b> 44:2 57:6 <b>rungs</b> 43:3 <b>running</b> 11:4 <b>s</b> <b>salary</b> 59:10 <b>satisfactory</b> 66:7 <b>satisfied</b> 23:16 66:10,11 <b>savannah</b> 13:10 <b>save</b> 33:14 63:3 <b>saved</b> 16:9,12,15 <b>saves</b> 33:11 <b>saving</b> 24:1 <b>saw</b> 32:22 56:6,9 <b>saying</b> 25:23 50:21 <b>says</b> 7:7 13:3 72:11 <b>scheduled</b> 19:19 21:12 22:14 <b>school</b> 10:17,19 12:6 <b>scott</b> 1:14 5:1 9:8 19:6 47:2 76:2	<b>scottsdale</b> 10:23 <b>screen</b> 62:3 <b>seal</b> 76:15 <b>second</b> 25:19 39:17 <b>section</b> 28:1 <b>see</b> 34:5 41:23 54:24 55:13,14 67:14,15 <b>seen</b> 73:18 <b>segment</b> 54:7 <b>segments</b> 54:8 <b>self</b> 30:25 <b>sell</b> 25:17 27:14 <b>selling</b> 66:24 <b>send</b> 19:13,17,22 30:7 76:16,21 <b>sense</b> 34:14 43:17 57:2 68:6 <b>sent</b> 19:18 21:10 21:11,12 30:1,5 <b>separate</b> 23:5 <b>series</b> 12:2,3 <b>serve</b> 49:15,16 75:21 <b>served</b> 14:1 49:11 49:12 <b>server</b> 56:15 <b>set</b> 17:15 20:11 28:24 <b>sets</b> 23:24 <b>share</b> 16:13,14 <b>shifted</b> 51:4 53:12 64:13 <b>short</b> 64:10 <b>show</b> 61:25 62:6 <b>showed</b> 55:12 56:10 67:6 <b>shown</b> 55:16 63:17 <b>sign</b> 5:11 6:1 25:9 27:23 29:19 76:6	<b>signatory</b> 70:10 <b>signature</b> 74:8 75:24 76:2,20 78:18 <b>signed</b> 28:23 29:23 76:12,14,18 <b>significantly</b> 68:2 68:3,4,24 <b>silos</b> 24:8 <b>simple</b> 35:1 36:19 59:5 66:23 <b>simplest</b> 59:7 <b>simply</b> 41:15 51:17 <b>single</b> 62:7 <b>sir</b> 8:22 9:2,5,13 9:16 14:2 15:19 <b>sit</b> 45:16 <b>site</b> 41:9 52:16 <b>sits</b> 41:12 47:10 <b>sitting</b> 33:15 <b>situation</b> 23:12,12 <b>six</b> 43:4,5,5 56:25 <b>skill</b> 17:15 20:11 23:24 <b>slaughtered</b> 19:7 <b>slice</b> 36:25 <b>slide</b> 62:6 <b>slight</b> 61:12 <b>slightly</b> 58:16 <b>small</b> 10:22 <b>smoke</b> 27:24 <b>sold</b> 17:25 27:15 <b>solely</b> 75:18 <b>solicitations</b> 6:15 <b>solutions</b> 1:7 <b>somebody</b> 69:23 <b>somebody's</b> 69:16 <b>somewhat</b> 64:2 <b>sorry</b> 21:20 55:3
--	---	--	---

[sort - thanks]

Page 15

<b>sort</b> 9:3 12:14 27:20 57:22 69:18 <b>sounds</b> 13:4 23:17 <b>source</b> 47:7 <b>southeast</b> 56:16,17 <b>speaking</b> 14:15 <b>spearman</b> 1:4 3:25 5:7 10:3 15:1,14 15:18 54:17 61:9 61:17 62:1,23,25 63:16 65:24 66:19 68:18 <b>special</b> 23:25 <b>specific</b> 10:2 32:10 45:7 53:23 55:9 56:9 61:8 70:9 <b>specifically</b> 20:22 22:18 29:22 45:5 51:22 52:24 53:1 58:7 63:6 <b>speculating</b> 56:4 58:15 <b>speculation</b> 56:2 57:16 <b>spend</b> 57:18 <b>spent</b> 11:3,6 17:17 26:24 31:2,5,9 33:4,6,18 <b>split</b> 59:12,18 61:13,25 <b>spoken</b> 71:13 <b>spot</b> 71:17 73:19 <b>spring</b> 71:18 <b>sql</b> 12:22 32:16,18 <b>stack</b> 33:12 <b>staff</b> 23:23 24:20 <b>standard</b> 23:10 27:22 <b>start</b> 10:16 16:24 23:18 27:11 30:11 30:19 38:25	<b>started</b> 20:10 24:6 58:20 64:14 <b>starting</b> 22:1 <b>starts</b> 33:20 <b>state</b> 9:7 11:25 12:5 75:2 <b>stated</b> 20:22 71:7 75:5 <b>statement</b> 35:16 68:24 77:12 <b>statements</b> 24:24 26:9,13 35:6,7,9 35:10,12,13,22 46:13 68:21 <b>states</b> 1:1 <b>stating</b> 51:9 <b>stay</b> 73:3 <b>stayed</b> 22:13,16,18 68:10 <b>stays</b> 68:4,5 <b>step</b> 28:4 59:14,15 <b>steps</b> 60:2 <b>stipulated</b> 4:1 <b>stipulations</b> 6:5 <b>stories</b> 58:16 <b>stranger</b> 19:14 <b>strategic</b> 18:14 <b>streams</b> 54:9 <b>street</b> 3:17 <b>strengths</b> 20:11 <b>strive</b> 67:24 <b>strong</b> 31:25 32:1 <b>structural</b> 25:17 <b>structure</b> 12:19 27:6 <b>stuff</b> 13:1 15:12 47:2 50:12 <b>subcontractor</b> 75:19 <b>subject</b> 50:25 73:9 73:23	<b>subpoena</b> 5:9 45:22 49:7,11,12 49:15,17 71:20 <b>subpoenaed</b> 47:25 <b>subprime</b> 10:24 13:12 <b>subscribed</b> 78:19 <b>substance</b> 77:10 <b>sued</b> 6:24,25 <b>suite</b> 3:8,17 76:23 <b>sun</b> 11:14 <b>super</b> 10:15 <b>support</b> 65:19 <b>sure</b> 7:9,14 14:23 18:7 19:15,22 22:3 28:4 31:3 35:21 40:16 63:14 71:6 <b>suspend</b> 72:2,6 73:8 <b>suspending</b> 74:1 <b>swearing</b> 4:2 <b>sworn</b> 5:2 78:19 <b>system</b> 33:23	<b>talking</b> 6:22 39:23 48:4 52:24 53:14 54:13,13,14,16 57:6 60:14,25 72:21 <b>tax</b> 50:10 <b>team</b> 27:5 31:2 33:5 44:19,19,22 <b>technical</b> 32:24 36:16 37:19,20 38:9 43:17 <b>technicality</b> 43:9 <b>techniques</b> 24:1 45:7 <b>tell</b> 7:11 20:3 22:23,24 23:13 25:20 34:16 37:16 39:20 42:15,22 43:18 45:1,17 47:7,17 57:21 63:14 69:3 <b>telling</b> 30:24 <b>ten</b> 34:22 66:25 67:1 <b>tension</b> 47:11,14 60:13 <b>term</b> 38:9 <b>terminated</b> 69:19 <b>termination</b> 69:18 <b>terms</b> 27:23 28:25 29:4 32:24 75:19 <b>terrible</b> 43:1 <b>terribly</b> 7:18 <b>testified</b> 5:3 66:14 <b>testify</b> 9:1 71:12 <b>testimony</b> 36:9 40:12 47:20 49:19 77:4,11 <b>thank</b> 50:13 <b>thanks</b> 48:13
		<b>t</b>	
		<b>t</b> 3:15 <b>table</b> 7:22 <b>take</b> 7:10,22 11:6 13:15 27:25 28:10 34:3 36:21 44:2 48:9 64:24 72:18 <b>taken</b> 6:9 7:8 75:5 <b>takes</b> 46:23 <b>talk</b> 17:6 20:14 22:1 27:6 40:3 43:7 47:18 66:25 67:3 73:12 <b>talked</b> 5:15 15:8 24:3 38:16 40:2 42:20 58:1,4 61:23	



<b>thargrove</b> 3:10 <b>thefinleyfirm.com</b> 3:10,11 <b>thing</b> 25:25 <b>things</b> 6:15 12:3 12:23 16:12 20:13 23:21,22 24:2,5 25:17 27:25 32:18 34:15,16 35:3 36:16 42:10 64:21 67:17 <b>think</b> 7:17 16:11 17:6,11,16,25 20:12,22 25:24 27:4 28:2 29:5,24 29:25 30:23,25 31:14,16,21,25 32:7,11,20 33:22 34:13 36:2 37:1,3 38:4,9,9 39:8,14 39:22,25 41:14 43:15,24 45:3,13 45:23,24 46:1,5,7 46:21,23,25,25 47:10 51:5,7,9,10 53:14,23 54:12 58:14,15,17,20 64:3,5,11 65:1,22 65:25 66:5 67:16 67:24,25 68:20,22 68:23 73:7 <b>thinking</b> 53:25 65:16 <b>third</b> 24:21 35:13 <b>thought</b> 53:13,16 53:20 58:3,9 <b>thousand</b> 30:12 63:11 <b>three</b> 15:8 17:9,16 19:3 21:19 22:6 22:17,22 24:15	27:12,15 34:21 38:2,3,7,7 <b>thrive</b> 64:14 <b>throw</b> 73:14 <b>time</b> 9:21 10:21 11:2,5 15:5,11 16:1 17:8 23:15 28:3 31:1,5,9 33:4 33:5,12,18 38:21 39:8,9 47:5 51:6,7 51:12 52:23 57:19 65:10 66:1 76:18 <b>timelines</b> 25:16 27:6 <b>times</b> 9:18,20 10:9 15:9 <b>title</b> 42:6 <b>today</b> 5:9,14,19,22 7:7,17,19,25 8:21 9:1 45:16,21 49:2 71:24 74:4 <b>told</b> 20:9 30:19 32:5 40:19 43:22 46:12 53:25 58:16 71:15,23 <b>tool</b> 56:14 <b>top</b> 37:21,24 <b>topic</b> 20:20 47:19 53:1 73:3 <b>topics</b> 70:15 73:6 <b>town</b> 22:19 <b>track</b> 28:15 63:12 <b>tracks</b> 43:7 <b>transcript</b> 75:5,8 76:8,16,19 77:4 <b>transferred</b> 11:2 <b>transparency</b> 65:18 <b>travis</b> 3:4 5:6 6:3 21:25 70:7,21	<b>trick</b> 8:1 <b>trickled</b> 34:22 <b>trip</b> 8:2 <b>true</b> 50:22 64:7 75:8 <b>trust</b> 66:3 <b>truthfully</b> 8:25 <b>try</b> 55:9 67:16 <b>trying</b> 7:13 8:1,1,2 33:1 64:3 73:13 <b>turned</b> 16:19,20 <b>tustin</b> 22:9 26:24 27:11 <b>two</b> 10:23 16:16 17:9,25 19:3 22:17,22 23:15 24:18 27:12 34:5 34:5 35:11 36:21 38:2 39:15 53:12 59:11,15 66:22 <b>twofold</b> 51:3 <b>type</b> 13:10 15:12 19:20 62:3 <b>types</b> 23:24 32:9 38:15 40:24 43:7 64:21 <b>typewriting</b> 75:7	51:12 53:11,11,17 57:18 <b>understood</b> 7:16 7:24 8:9,14 40:1 43:14 51:14 <b>unique</b> 28:2 <b>unit</b> 45:9 <b>united</b> 1:1 <b>units</b> 67:1 <b>university</b> 12:1 <b>unrelated</b> 41:21 <b>upload</b> 33:11 <b>uploaded</b> 56:15 <b>usage</b> 44:4,6,9 <b>use</b> 16:11 24:17 42:8 45:8 77:14 <b>useful</b> 20:25 <b>usual</b> 6:4 <b>utilization</b> 44:13
			<b>v</b>
			<b>value</b> 20:16,21,24 43:4 <b>vanguard</b> 10:20 <b>varying</b> 36:13 <b>vast</b> 20:10 <b>vendors</b> 31:10 <b>verbal</b> 7:9,11 <b>veritext</b> 76:13,22 <b>versus</b> 16:13 25:13 32:18 33:12 38:3 38:6 41:18 47:1 51:11,17 58:21 <b>vicinity</b> 22:13 <b>videoconference</b> 1:12 3:1 <b>view</b> 38:4,10,13 51:17 <b>visible</b> 40:3 41:18 <b>visit</b> 9:22 49:3 <b>visually</b> 38:4
		<b>u</b> <b>uh</b> 7:12 <b>ultimately</b> 40:17 61:16 <b>uncomfortable</b> 60:9 69:22 <b>undergraduate</b> 11:24 <b>undersigned</b> 77:3 <b>understand</b> 8:6,8 8:11,15 35:21 46:21 64:4 72:15 <b>understanding</b> 8:12 38:14 44:15	

[volume - zoom]

Page 17

<b>volume</b> 44:5	<b>weaknesses</b> 20:12	<b>y</b>
<b>voluntarily</b> 49:8	<b>wealth</b> 24:17	<b>y</b> 29:20
<b>vs</b> 1:6	<b>website</b> 37:8	<b>yeah</b> 15:7 18:5
<b>w</b>	<b>week</b> 27:3 42:10	19:4 22:11 29:5
<b>w.p.</b> 12:5	<b>weekend</b> 22:19	31:14 39:6 46:21
<b>waive</b> 5:12 6:1	26:25	65:25 66:5
69:17 70:11 71:10	<b>weeks</b> 17:25 27:12	<b>year</b> 10:21 12:7,10
71:14	<b>went</b> 8:16 10:21	51:2 53:21 63:12
<b>walk</b> 10:12 11:22	10:24,25 11:7	<b>years</b> 10:23 11:1,3
16:3,22 17:1	17:17 20:19 24:11	11:6,6 18:25
<b>walking</b> 17:19,20	29:19 30:18 62:21	21:19,22 26:21
<b>want</b> 5:25 7:14	65:13	41:14 62:4 63:13
10:14 16:24 17:10	<b>west</b> 11:14 44:6	67:14
19:7,13 24:3	<b>westle</b> 3:24	<b>young</b> 40:20
26:18 32:10 37:20	<b>wholesale</b> 10:22	<b>z</b>
43:9,11 44:7 45:3	<b>willing</b> 48:19 61:3	<b>zoom</b> 3:1 5:9
45:8 47:1 49:5	71:10,14	
50:1 58:24 60:10	<b>wish</b> 18:13	
69:15 71:5 72:16	<b>witness</b> 4:2	
72:25 73:18	<b>wives</b> 15:3	
<b>wanted</b> 19:22	<b>word</b> 36:3	
22:20 31:22 46:21	<b>words</b> 42:19 51:21	
46:22	68:17	
<b>wants</b> 13:3 46:24	<b>work</b> 10:10 22:20	
47:2 69:23	24:5,6 26:3 30:4,5	
<b>warehouse</b> 24:1	30:7,14 44:23	
24:10 31:10	46:19	
<b>watching</b> 33:16	<b>worked</b> 10:19 13:6	
<b>waterfall</b> 37:21	24:4 25:6 39:19	
<b>way</b> 7:10 8:8	40:20	
15:14 26:3,9,14	<b>worries</b> 33:3	
28:15,15 32:7	<b>worst</b> 37:1	
36:23 37:22,25	<b>worth</b> 51:9 68:1	
41:22 42:17,20	<b>wow</b> 27:13	
43:12,16,19 44:25	<b>wrench</b> 73:14	
45:1,16 50:19	<b>wrong</b> 30:11 43:20	
58:13 59:13 72:23	68:3,4	
<b>wayne</b> 22:12	<b>x</b>	
<b>ways</b> 33:16	<b>x</b> 29:19	
<b>we've</b> 15:8		

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



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